

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CRIMINAL TERM : PART 33

-----x
THE PEOPLE OF THE STATE OF NEW YORK

Plaintiff,

-against-

LORENZO MCGRUFF,

Defendant.

-----x
Indict. No. 6248/15

TRIAL

320 Jay Street
Brooklyn, New York

December 19, 2016

B E F O R E :

HONORABLE MIRIAM CYRULNIK,
Justice, and a jury.

(Appearances same as previously noted.)

VANESSA DEL VALLE
Official Court Reporter

* * * *

THE CLERK: Calling number three from the
Part 33 calendar, indictment 6248 of 2015, Lorenzo
McGriff. Case continued on trial. Parties are
present. Defendant is out on bail. Jury panel is not
present.

MS. BURKE: One moment, Your Honor.

THE COURT: Sure. You can have a seat.

Thank you.

MS. BURKE: Jamie Burke, Brooklyn Defender

1 Services, 177 Livingston Street, Brooklyn, New York
2 11201 on behalf of Mr. McGriff.

3 MR. WITTWER: Ben Wittwer, also on behalf of
4 Mr. McGriff.

5 Good morning.

6 THE COURT: Good morning.

7 MR. MOTTOLA: For the Office of the District
8 Attorney, Lawrence Mottola.

9 Good morning.

10 THE COURT: Good morning.

11 MS. D'AGOSTINO: Office of the District
12 Attorney by Stephanie D'Agostino.

13 THE COURT: Good morning, everyone.

14 Good morning, Mr. McGriff.

15 Miss Burke, ready to go?

16 MS. BURKE: Yes, Your Honor.

17 THE COURT: You can line them up. Thank you.

18 (Whereupon, there was a pause in the
19 proceedings.)

20 COURT OFFICER: Ready for the jury?

21 THE COURT: Thank you.

22 COURT OFFICER: Jury entering.

23 Step in.

24 (Whereupon, the jury entered the courtroom.)

25 THE CLERK: Good morning. The jury panel is

1 present and properly seated.

2 Does each side waive the jury roll call?

3 MR. MOTTOLA: So waived.

4 MS. BURKE: So waived.

5 THE CLERK: Thank you.

6 THE COURT: Thank you.

7 Good morning, everyone.

8 THE JURY: Good morning.

9 THE COURT: We're back to work and therefore
10 it's cold.

11 (Whereupon, there was laughter in the
12 courtroom.)

13 THE COURT: Okay. Well hope you all had a
14 restful weekend and/or finished all your holiday
15 shopping. And we can relax, drink your tea or coffee.
16 Make yourselves comfortable.

17 Miss Burke, whenever you are ready, or is
18 it --

19 MS. BURKE: Your Honor, at this time I would
20 call Nicole McGriff.

21 MR. MOTTOLA: Oh, wait a minute.

22 Could we approach, Your Honor?

23 THE COURT: Sure.

24 (Whereupon, there was a discussion held at
25 the bench off the record.)

1 THE COURT: All right, ladies and gentlemen,
2 I am going to step outside with the attorneys for just
3 a moment, and the reporter. Please don't speculate
4 about the reason for that. Don't discuss the case
5 amongst yourselves while you are sitting here, and we
6 will be back to you in just a moment. Thank you.

7 (Whereupon, the following took place outside
8 the presence of the jury.)

9 THE COURT: Okay. Mr. Mottola.

10 MR. MOTTOLA: Yes. So I just have an
11 application that the defense be required to make an
12 offer of proof as to what Mr. McGriff's wife would say.
13 I don't believe she was a witness at the scene. I
14 don't know why she is being called.

15 MS. BURKE: Your Honor, if I may,
16 Miss McGriff had been married to Mr. McGriff for 25
17 years. She knows what his hobbies are. She knows the
18 instrument that was used in this incident and she can
19 attest to what it was, because Mr. Mottola has been
20 repeatedly calling it a knife. And she knows that her
21 husband uses it to repair wires, speakers and wires and
22 things like that. She knows it's a wire stripper.

23 That's the extent of her testimony.

24 MR. MOTTOLA: Just if I could just respond
25 just briefly, Your Honor.

1 Whether or not it was a knife or a wire
2 stripper I would argue is collateral, completely. It's
3 a dangerous instrument he used to plunge into Mohammed
4 Khalifa five times. He admitted it on the stand. And
5 several times throughout his own testimony he referred
6 to it as a knife. He only stuck to it as a wire cutter
7 mostly on direct and occasionally on cross, but
8 ultimately called it a knife, and referred to it as a
9 knife in the grand jury, including the testimony that I
10 impeached him with.

11 THE COURT: Okay. I mean, I think that's a
12 collateral issue so... I don't see how that's relevant.
13 I don't see how it's relevant.

14 MS. BURKE: Note my exception for the record.

15 THE COURT: Understood. Okay. Thank you.

16 (Whereupon, the following took place within
17 the presence of the jury.)

18 MS. BURKE: May we approach, Your Honor?

19 THE COURT: Sure.

20 (Whereupon, there was a discussion held at
21 the bench off the record.)

22 THE COURT: All right, ladies and gentlemen,
23 Miss McGriff is not going to be a witness at this
24 trial. That is based upon a ruling made by me. You
25 are not to speculate about the reasons for that ruling.

1 But simply, that's the reason why she is not
2 testifying.

3 So if she is outside and she wishes to come
4 in and observe, that's certainly fine.

5 (Whereupon, there was a pause in the
6 proceedings.)

7 THE COURT: All right, Miss Burke.

8 MS. BURKE: Your Honor, at this time I would
9 call Dominique Boyd.

10 She's in the first room to the left.

11 COURT OFFICER: Okay.

12 THE COURT: Okay.

13 (Whereupon, there was a pause in the
14 proceedings.)

15 COURT OFFICER: Ready for the witness, Your
16 Honor?

17 THE COURT: Yes. Thank you.

18 COURT OFFICER: Witness entering.

19 THE CLERK: Please face me. Raise your right
20 hand.

21 **DOMINIQUE BOYD,**
22 called as a witness, having been first duly sworn by the
23 clerk of the court, was examined and testified as follows:

24 THE WITNESS: Yes.

25 THE CLERK: Okay. Please be seated. Watch

1 the chair, it's on wheels.

2 Once you get comfortable I will ask you to
3 please state your name for the record.

4 THE WITNESS: Okay.

5 THE CLERK: And also spell your name for the
6 record.

7 THE WITNESS: Dominique Boyd.

8 THE CLERK: Spell your name for the record.

9 THE WITNESS: D-O-M-I-N-I-Q-U-E, B-O-Y-D.

10 THE CLERK: Thank you very much.

11 THE COURT: All right. So, Miss Boyd, just
12 make yourself comfortable again. When you answer
13 questions, nice and loud so they can hear you in the
14 empty seats in the back.

15 THE WITNESS: Okay.

16 THE COURT: Miss Burke, whenever you are
17 ready.

18 DIRECT EXAMINATION

19 BY MS. BURKE:

20 Q Good morning, Miss Boyd.

21 A Good morning.

22 Q By whom are you employed?

23 A The FDNY.

24 Q What does FDNY stand for?

25 A Fire Department of New York.

1 Q What capacity?

2 A I am sorry?

3 Q In what capacity are you employed?

4 A I am an EMT.

5 Q What is an EMT?

6 A Emergency medical technician.

7 Q How long have you been an EMT?

8 A I've been an EMT for about six years; with the fire
9 department for three.

10 Q Were you employed as an EMT on August 11, 2015?

11 A Yes.

12 Q And were you working that day?

13 A Yes.

14 Q Can you tell me what shift you were working?

15 A Second shift.

16 Q What is the second shift? What are the hours?

17 A 9 a.m. to 5 p.m.

18 Q And during your shift of 9 a.m. to 5 p.m. did you
19 happen to receive a call involving an incident at or around
20 Boerum Place in Brooklyn, New York?

21 A Uh, well we got the call. The call was on
22 Livingston Street.

23 Q Livingston and what? Do you recall?

24 A I'm not too sure.

25 Q Is there something that would refresh your

1 recollection?

2 A No. I just know it was on Livingston Street.

3 Q Okay. Do you recall approximately what time it
4 was?

5 A No.

6 Q Could it have been in the morning or in the
7 afternoon?

8 A Um, I'm not sure what time it was in. I know the
9 sun was out, so...

10 Q Once you received the call what, if anything, did
11 you do?

12 A Uh, well we went to Livingston, looking for a
13 patient. We didn't find the patient. So we riding around
14 and finally found the patient. I am just not sure exactly
15 where it was. I know it was in the vicinity but not sure
16 where.

17 Q Did you write a report as to this incident?

18 A Yes, I did write the report.

19 Q Would your report refresh your recollection as to
20 where you found the person?

21 A Yeah. You could --

22 Q Do you have your report with you?

23 A It's there (indicating).

24 MS. BURKE: May I, Your Honor?

25 THE WITNESS: It's in my bag.

1 COURT OFFICER: I will get it.

2 MS. BURKE: Your Honor, for the record, I'm
3 handing what's been retrieved from the witness's bag.
4 It's about three or four pieces of paper.

5 THE COURT: Okay. Just use that to refresh
6 your recollection, Miss Boyd.

7 THE WITNESS: Mmm-hmm.

8 THE COURT: If it does. And then when you
9 finish looking at that, let us know.

10 (Whereupon, there was a pause in the
11 proceedings.)

12 A Okay. The report just has Livingston and Court.

13 Q Okay. Without reading from the report --

14 THE COURT: Thank you.

15 A Oh, sorry.

16 Q Is your recollection refreshed? Do you remember
17 where the call came to?

18 A Livingston and Court.

19 Q Okay. Does the report reflect where you saw the
20 person at?

21 A No.

22 Q When you encountered this person, can you tell me
23 what happened?

24 A Um, well we got on scene, and I mean there's not
25 much that I remember, but I just know that the patient was

1 like a little irate. He didn't want us to touch him or he
2 didn't want us to help him. He was very verbally abusive
3 and really aggressive.

4 Q And when you say verbally abusive, can you
5 demonstrate for the Court what was said?

6 A Um, he was calling us, uh, niggers and bitches and
7 he didn't want us to touch him. He was just saying, don't
8 touch me. Get off of me.

9 Then we had to call for, um, I had to call another
10 crew to sedate him because he didn't want us to touch him.

11 Q You testified that we tried to treat him.

12 Who was the other person that was with you?

13 A My partner, Aniqua Watkins.

14 Q Is she a black female?

15 A Yes, she is.

16 Q How long were you with the patient?

17 A I'm not sure. A few minutes.

18 Q And during the time that you were with him were you
19 able to control him?

20 A No, we wasn't able to control him, not until the
21 medics get there.

22 Q What, if anything, did you see the medics do?

23 A Mmm... I don't really remember much. I mean... I
24 can't tell you what the medics did.

25 Q You testified that he was a little erratic you

1 said?

2 A Yeah.

3 Q Can you explain to the jury what you mean by that?

4 A Well he was fighting us and, you know, he didn't
5 want us to touch him. He was calling us niggers. He didn't
6 want to be treated at all. Not even with oxygen. He didn't
7 want us to touch him. He was yelling and screaming.

8 Q And do you recall what he was yelling and
9 screaming?

10 A Yeah. Don't touch me. Get off of me. He was
11 calling us niggers. I don't want you niggers to touch me.

12 Q Did you transport the patient to the hospital?

13 A Yes, we did.

14 Q And which hospital did you transport him to?

15 A To Methodist.

16 Q How long did it take you to get him to the
17 hospital?

18 A I'm not sure.

19 Q Do you recall what type of injuries the patient
20 had?

21 A Um, stab wounds.

22 Q You recall where?

23 A I'm not sure exactly where.

24 Q Is there something that would refresh your
25 recollection?

1 (Whereupon, there was a pause in the
2 proceedings.)

3 MS. BURKE: Just for the record, Miss Boyd is
4 looking at her report.

5 THE COURT: That's okay. If that would help
6 refresh your recollection, you can go ahead and do
7 that. Again, just let us know when you are done. And
8 when you answer, don't read from the report.

9 THE WITNESS: Okay.

10 (Whereupon, there was a pause in the
11 proceedings.)

12 A I'm done.

13 Q Is your recollection refreshed?

14 A Yes.

15 Okay. So I know he had a few stab wounds to his
16 face and his back.

17 Q Okay. And is this report a fair and accurate
18 representation of what happened on this day?

19 A Yes, it is.

20 Q Is it the report that you prepared?

21 A Yes.

22 MS. BURKE: At this time I would move the EMT
23 report into evidence as Defense...

24 THE COURT: As Defense A.

25 MS. BURKE: Defense A, Your Honor.

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1 THE COURT: Is that on consent?

2 MR. MOTTOLA: I have no objection outside of
3 just making it subject to redaction for personal
4 information.

5 THE COURT: Okay. That was, I am sorry, EMS
6 report?

7 MS. BURKE: Yes, Your Honor.

8 Q Miss Boyd, on the third page of your report there's
9 a paragraph that describes what happened.

10 COURT OFFICER: You need this back?
11 (Indicating).

12 MS. BURKE: I am sorry. Maybe the second
13 page. May I?

14 Q Where it says narrative history text?

15 A Mmm-hmm.

16 Q Could you read that to the jury, please?

17 A Patient found ambulatory on scene, patient states
18 he was stabbed by someone. Patient has two stab wounds to
19 the left side of his back. One stab wound to right jaw.
20 And one stab wound to left forehead above eyebrow.

21 Patient was very combative, uncooperative, verbally
22 abusive and assaulted crew. Patient was taken off O 2.
23 Only allowed one set of vitals and not allowing crew to
24 dress wounds. ALS was called for sedation. Rescue arrived
25 on scene and took over patient care. Bleeding was

VdV

1 controlled and wound covered. Patient transported in prone
2 position due to comfort without incident.

3 Q In that report you said the patient assaulted the
4 crew.

5 Were you one of the crew members that the patient
6 assaulted?

7 A Well yeah, 'cause he was, um, like I said, he
8 didn't want us to touch him. So, you know, to get us away
9 from him it was kind of like pushing us off of him, swinging
10 his arms around, trying to get us off of him.

11 MS. BURKE: Nothing further.

12 CROSS EXAMINATION

13 BY MR. MOTTOLA:

14 Q Good morning, Miss Boyd.

15 A Good morning.

16 Q You've been working for the FDNY you said three
17 years?

18 A Yes.

19 Q You have been an EMT for six years?

20 A Yes.

21 Q How many, I guess, patients, right, that you refer
22 to them as patients?

23 A Right.

24 Q How many patients would you say you've responded to
25 with your ambulance in your six years?

1 MS. BURKE: Objection. Relevance.

2 THE COURT: Overruled. If I determine
3 ultimately that it is irrelevant I will strike it.

4 A Can you repeat the question?

5 Q Approximately how many different patients have you
6 responded to with your ambulance over the six years?

7 MS. BURKE: Objection to different.

8 A A lot --

9 THE COURT: Miss Boyd, if you hear objection,
10 you have to wait for me to tell you whether you can
11 answer.

12 THE WITNESS: Okay.

13 THE COURT: All right. Overruled.

14 Go ahead.

15 A Thousands of patients.

16 Q Okay. Have you ever had difficulty with a patient
17 before?

18 A All the time.

19 Q Okay. Thank you, Miss Boyd.

20 MR. MOTTOLA: I have nothing further.

21 THE WITNESS: You're welcome.

22 MS. BURKE: Nothing further.

23 THE COURT: Okay. Miss Boyd, thank you so
24 much. You may step down.

25 THE WITNESS: Thanks.

1 (Whereupon, the witness was excused from the
2 stand.)

3 MS. BURKE: Defense has no further witnesses,
4 Your Honor.

5 THE COURT: Okay. Defense rests?

6 MS. BURKE: Defense rests.

7 THE COURT: Thank you.

8 Okay, ladies and gentlemen, that will
9 conclude the testimony in this matter. I am going to
10 send you back into the jury room for a little bit while
11 I address some issues with the attorneys. Please don't
12 speculate about what those might be.

13 Don't discuss the case amongst yourselves or
14 with anyone else. And we will bring you back out in
15 just a little while. Thank you.

16 (Whereupon, the jury left the courtroom.)

17 THE COURT: Miss Burke, Mr. Wittwer.

18 MR. WITTWER: Yes, Your Honor.

19 At this time I am moving for a trial order of
20 dismissal pursuant to CPL 209, subsection 10 of the
21 attempt assault one, the top count in this case. Penal
22 law 110/120, subsection 1. Because the People --

23 THE COURT: Keep your voice up a little bit.

24 MR. WITTWER: Thank you, Your Honor.

25 Because the People have not made out an

1 intent on Mr. McGriff's part to cause serious physical
2 injury.

3 Your Honor has heard testimony now on the
4 defense case Mr. McGriff was not the aggressor in the
5 incident. That Mr. McGriff's actions in the incident
6 were to deter the complainant from continuing to pursue
7 and threaten him. Which suggests that his intention
8 was not to cause a substantial risk of death or
9 disfigurement, rather to subdue his attacker. And no
10 evidence or medical records that detail the extent of
11 the injuries in this case which do not amount to
12 serious physical injury under our law.

13 The knife wounds that Mr. Khalifa suffered
14 were one inch in length. They were minor injuries for
15 which he left the hospital less than 24 hours after
16 medical personnel began to treat him. So we know that
17 the injuries in this case were not significant to the
18 point of serious physical injury.

19 We now have substantial evidence that
20 Mr. McGriff's intent was to fight back rather than to
21 cause grave injury.

22 And again, I would remind the Court there is
23 no evidence Mr. McGriff made statements to the point he
24 wanted to badly injure this individual. There is no
25 evidence that his intent was to injure him in a more

1 substantial way than he was. And I think most
2 significantly there were no intervening factors that
3 would prevented Mr. McGriff from seriously injuring
4 Mr. Khalifa by stabbing him, he simply chose to stop
5 and run.

6 I think the fact that he ran away is also
7 indicative of the fact that there is no evidence that
8 this was an attempt to cause serious physical injury.
9 So I would ask the Court to dismiss that count.

10 THE COURT: Okay.

11 MR. MOTTOLA: Just regarding the injury, Your
12 Honor, I renew the comments I made at the trial order
13 of dismissals at the close of the People's case. We
14 know there is no serious physical injury. That's why
15 we reduced or dismissed the B felony and the defendant
16 sits charged with the attempted assault in the first
17 degree.

18 Regarding Mr. McGriff's mental state, I would
19 just say that is an issue of credibility and it should
20 be left up to the jury to decide. And the People rely
21 on the record.

22 THE COURT: Thank you.

23 (Whereupon, there was a pause in the
24 proceedings.)

25 THE COURT: All right. Thank you.

1 The motion for the trial order of dismissals
2 to count one is denied.

3 Why don't you come up as to pre-charge
4 requests.

5 (Whereupon, there was a discussion held at
6 the bench off the record.)

7 THE COURT: All right. I had an opportunity
8 to review the special requests. People had made a
9 request that the defendant is an interested witness be
10 included, which it is. And the general charge about
11 that there is no specific way that People are required
12 to prove their case, that's in the language as well.

13 Let's talk, defense had requested
14 justification, which is in there. Use of physical
15 force. And they had also made a request for a missing
16 witness charge.

17 Let's put that on the record.

18 MR. WITTWER: Thank you, Your Honor.

19 We are requesting the missing witness charge.
20 We are asking the Court in its discretion to give the
21 charge. We noting particularly that the People both in
22 voir dire and opening addressed the fact they weren't
23 going to call the complainant in this case, Mohammed
24 Khalifa. And throughout voir dire I want to make a
25 record asked, encouraged the jurors that it was

1 important that they be willing to listen to the facts
2 without the complaining witness and not hold it against
3 them that the complainant isn't called, even though
4 this instruction does, because jurors are permitted in
5 our law to draw inferences from the fact that the
6 complainant is not called.

7 Where the complaining witness would be the
8 most significant eyewitness one would expect the People
9 to call, this is a situation where it is uniquely
10 important we receive this charge. The four factors
11 that the complainant has material knowledge about the
12 issue. Clearly he was present for the entire incident.
13 He is in control of the People would be expected to
14 testify favorably. Testify favorably.

15 Doesn't mean in the case law that the witness
16 would be a good witness or the witness would be a
17 witness that, you know, presented themselves well. But
18 rather that they would, that they would testify to
19 material information that would allow the People to
20 make their burden.

21 For that reason, Mr. Khalifa is clearly a
22 witness that the People would be expected to call and
23 testify favorably, not because he doesn't have issue,
24 which makes him a difficult witness, which I suspect is
25 the reason why the People decided not to call him.

1 Remember it was, he was an eyewitness to
2 information that was served as evidence, help the
3 People meet their burden in this case that the third
4 factor not be cumulative. None of the witnesses the
5 People called were witnesses to the entire set of
6 events. Mr. Khalifa would add a significant amount of,
7 amount for testimony and evidence for the witness.

8 In terms of availability, the People are
9 aware Mr. Khalifa has been through the justice system
10 prosecuted by the District Attorney's Office since this
11 incident. So, that means we know for a fact that
12 Mr. Khalifa was actually in the custody and control of
13 the government where the People, while these charges
14 were pending, had an opportunity to speak to him.

15 Additionally, I believe the People have
16 information as to his whereabouts in terms of his
17 brother's address. So I think we are clearly entitled
18 to the missing witness charge.

19 I am asking the Court, we are raising it now,
20 in its discretion to give the charge because it is so
21 central to this case and because I think that, that the
22 Court should protect Mr. McGriff's right to a fair
23 trial and due process, even where his attorneys made
24 mistakes, to prevent reversible error.

25 Asking the Court in its discretion to give

1 the instruction.

2 THE COURT: Yes.

3 MR. MOTTOLA: Judge, at the bench you
4 presented us with the Court of Appeals case People
5 versus Carr. I don't have the cite handy.

6 But specifically that the defense is required
7 at the close of the People's case to make this
8 application. They did not do so. I know it, as it
9 appears to be a technicality to the defense, it's still
10 an untimely motion.

11 This was not a surprise by the People. We
12 voir dired the issue. The defense voir dired on the
13 issue. They have known from the very beginning
14 Mr. Khalifa was a very high probability he would be
15 missing, would not testify in this case.

16 That's the first ground which I am objecting.

17 Regarding any kind of expectation of
18 Mr. Khalifa, we have testimony before this jury from
19 everyone interacted with him that day, or at least
20 within the proximity of the events of this case, we
21 have three civilian eyewitness females, we have the
22 defendant's version of what happened, we have the
23 ambulance, the EMT that testified this morning.
24 Everything about that testimony suggests that
25 Mr. Khalifa was erratic. And we know in the medical

1 records was positive on cocaine.

2 There is nothing at all we heard in any way
3 that suggests we could expect anything from him that
4 would in any way further my case, would even be
5 coherent in a court of law.

6 I will also add it's our position there on
7 the third prong of it being cumulative, whatever
8 happened before they got to Court Street wasn't
9 criminal. It's not relevant. It is a collateral issue
10 to this case. We have three eyewitnesses. You have a
11 911 caller. You have the defendant's testimony of what
12 happened. It is cumulative for that very reason.

13 I have nothing else to say, Your Honor.
14 Thank you.

15 MR. WITTWER: May I briefly add one thing for
16 the record, Your Honor?

17 THE COURT: You may.

18 MR. WITTWER: Thank you.

19 I just want to make it clear on the decision
20 not to raise the missing witness charge in the People's
21 case, before the close of the People's case in chief
22 was not a strategic decision by the defense, it was an
23 error. The Court has a chance to rectify the lean in
24 the case law for the requirement that it be raised
25 prior to the People's resting so they will have notice,

1 so if they choose to, they may perhaps even, you know,
2 be able to call the witness who was missing to avoid
3 the charge.

4 In this case we know that's not the
5 situation. We know there was no circumstance in which
6 the People was going to attempt to call this witness,
7 because they opened on the fact they weren't calling
8 him, so no harm was done by this late request. So I
9 think that's relevant in terms of balancing the
10 equities here. I would just ask the Court to consider
11 that.

12 (Whereupon, there was a pause in the
13 proceedings.)

14 THE COURT: There is case after case after
15 case that talks about the denial of a missing witness
16 charge made at this stage would not be error. But I
17 indicated at the bench and I will, since this is an
18 issue that's been all over this case from the
19 beginning, it's really not a surprise to anyone that
20 the issue has come up, I am willing to consider it.

21 My question, Mr. Mottola, is, what efforts
22 have the People made to find Mr. Khalifa?

23 MR. MOTTOLA: Yes.

24 At the grand jury stage, Your Honor, we did
25 attempt to subpoena him so we could get him to the

1 grand jury and at least interview him before we
2 determined whether or not we would, one, proceed with
3 charges against Mr. McGriff. And two, put him into the
4 grand jury as a witness.

5 I sent detective investigators to the only
6 residence we have at the time, which is what we had in
7 his medical records, which I later learned is an
8 address that belongs to, I believe one of his actual
9 blood brother. It's 6th Street address here in
10 Brooklyn.

11 The brother told our investigators then and
12 he told them again in September when they went out,
13 when this case was pending before Your Honor, we
14 attempted to secure Miss Guy with the material witness
15 order and the trap and trace, he had not seen his
16 brother, Mr. Khalifa. That he had stayed there in the
17 past and that he assumed that was the only address.

18 This is further corroborated from the Defense
19 Exhibit A which was in evidence this morning, the
20 pre-hospital care report Mr. Khalifa. He did give a
21 date of birth to Miss Boyd 12/10/83. His address he
22 put unknown, which to me indicates he did not give an
23 address.

24 Outside of the efforts to secure him at the
25 grand jury stage and again at pretrial, we have not

1 attempted to bring him in under a subpoena since there
2 was no jurisdiction after grand jury to subpoena him by
3 Court order.

4 I have no indication he is even alive at this
5 point. The last contact he had with Criminal Court I
6 suspect was sometime this fall. But I do not know that
7 for sure.

8 So those are the efforts the People made to
9 try to locate him.

10 THE COURT: Were you -- did anyone check with
11 the assistant assigned in this Criminal Court case to
12 see if he ever showed up?

13 MR. MOTTOLA: Yes, Your Honor. I believe he
14 did show up. I believe the case was resolved, however.
15 It was, I think it was sometime after, it was a,
16 shortly after the arrest of Mr. McGriff in this case.
17 I believe there was a misdemeanor case or a lower level
18 felony reduced to Criminal Court which he was making
19 appearances, I believe was resolved many months ago.

20 THE COURT: Do you have anybody reach out to
21 his defense counsel in that matter?

22 MR. MOTTOLA: I cannot say. I can't make
23 that application. No.

24 THE COURT: Okay.

25 MR. MOTTOLA: I did not.

1 (Whereupon, there was a pause in the
2 proceedings.)

3 MS. BURKE: Your Honor, it's my understanding
4 that through our investigation Mr. Khalifa was still
5 out on a warrant on the criminal matter.

6 MR. MOTTOLA: Wouldn't that further my point
7 that he is out there and the police are looking for him
8 and we don't know where he was? If he stopped at any
9 point, he would have been brought to court and put in
10 our custody and I could have found him.

11 MS. BURKE: The Court is well aware police
12 looking for people with misdemeanor warrants. That's
13 usually when they catch them, committing another crime
14 is when the warrant is activated.

15 THE COURT: Well perhaps he hasn't been
16 arrested in the interim. We don't know.

17 MS. BURKE: It's my understanding, if the
18 People were aware, Mr. Khalifa was coming in on his
19 misdemeanor case making appearances in court, then they
20 should have had an opportunity to speak with him then.

21 The fact that they only tried back in August
22 when this case was initiated and again in September,
23 over a year later to try and secure his appearance,
24 says that the People were not diligently looking for
25 him in this matter.

1 MR. MOTTOLA: Your Honor, I only have
2 subpoena power to compel someone to appear at the grand
3 jury stage. Outside of that, I only have it once we
4 begin trial. I sent our detective investigators out
5 when we were here before Judge Cyrulnik, and I went
6 before the Judge to secure a trap and trace for
7 Kadeisha Guy so we could learn about where she was.

8 Because counsel decided to write on a hearing
9 for a showup, the case was adjourned to now.

10 So, the only times I was able to compel
11 Mr. Khalifa was when I made my efforts to do so. I
12 just, I take offense to the comment that I was not
13 diligent, Your Honor.

14 THE COURT: Thank you.

15 (Whereupon, there was a pause in the
16 proceedings.)

17 THE COURT: Come on up.

18 (Whereupon, there was a discussion held at
19 the bench off the record.)

20 THE COURT: All right. So based on our
21 discussion at the bench, while I believe that it is an
22 equally strong argument could be made that Mr. Khalifa
23 is not under the control of the People any more than
24 he's under the control of defense counsel, in an
25 abundance of caution I am going to give the missing

1 witness charge, since if it ever got to that stage and
2 the Appellate Division determined that it was, indeed
3 it was required and it wasn't given, it would be, per
4 se, reversible error. So I will give that charge just
5 as I said for that particular reason.

6 We also discussed that I will submit to the
7 jury the two counts, attempted assault one and assault
8 two.

9 No other lessers beyond that. Correct?

10 MR. MOTTOLA: Yes.

11 THE COURT: Correct. Okay.

12 All right. Let me give you, if you want,
13 another by 11 o'clock or so, just go over your
14 remaining notes in anticipation of summation and then
15 we will bring the jury in. Okay.

16 Second call on the trial case.

17 (Whereupon, there was a break in the
18 proceedings and then resumed shortly thereafter.)

19 (Whereupon, other business was conducted and
20 then the case continued.)

21 THE CLERK: Recalling the case on trial back
22 on the record.

23 THE COURT: You can line up the jury.

24 THE CLERK: The parties are present but the
25 jury panel is not present at this moment.

1 (Whereupon, there was a pause in the
2 proceedings.)

3 COURT OFFICER: Ready, Your Honor?

4 THE COURT: All right. Let's go.

5 I have some brief pre-summation instructions
6 anyway so you have a few minutes more.

7 MS. BURKE: You have brief what, Your Honor?
8 Sorry.

9 THE COURT: Excuse me, pre-summation
10 instructions.

11 (Whereupon, there was a pause in the
12 proceedings.)

13 THE COURT: Counsels, you want to take a
14 seat, please? Let's go. Okay.

15 COURT OFFICER: Jury entering.

16 (Whereupon, the jury entered the courtroom.)

17 THE CLERK: Okay. The jury panel is present
18 and properly seated.

19 Does each side waive the jury roll call?

20 MR. MOTTOLA: So waived.

21 MS. BURKE: So waived.

22 THE CLERK: Thank you.

23 THE COURT: Thank you.

24 Members of the jury, you're now going to hear
25 the summations of the lawyers. Following the

1 summations I will instruct you on the law and you'll
2 begin your deliberations.

3 Under our law, defense counsel must sum up
4 first, and the prosecutor must follow. The lawyers may
5 not speak to you after that time.

6 Summations provide each lawyer with an
7 opportunity to review the evidence and submit for your
8 consideration the facts, inferences and conclusions
9 that they contend may be properly drawn from the
10 evidence.

11 If you find that a lawyer has accurately
12 summarized and analyzed the evidence, and if you find
13 that the inferences and conclusions that the lawyer
14 asks you to draw from that evidence are reasonable,
15 logical and consistent with the evidence, then you may
16 adopt those inferences and conclusions.

17 Members of the jury, I'll ask you to bear in
18 mind the following points.

19 First, you are the finders of fact. And it
20 is for you and you alone to determine the facts from
21 the evidence that you find to be truthful and accurate.
22 Thus, whatever the lawyers say and however they say it,
23 you should remember that what the lawyers say is simply
24 argument that's being submitted for your consideration.

25 Second, remember that the lawyers are not

1 witnesses in this case. So if a lawyer asserts as fact
2 something that is not based on the evidence, you must
3 disregard it. Remember, nothing the lawyers say at any
4 time is evidence. So nothing that the lawyers say in
5 their summations is evidence. You have heard the
6 evidence and you must decide this case on the evidence
7 as you find it and the law as I explain it.

8 Third, during the summations one lawyer's
9 recollection of the evidence may in all good faith
10 differ from the recollection of the other lawyer, or
11 from your own recollection.

12 And the lawyers will undoubtedly differ on
13 the conclusions that are to be drawn from the evidence.
14 It's your own recollection, your own understanding,
15 your own evaluation of the evidence that controls.
16 Regardless of what the lawyers have said or will say
17 about the evidence, you and you alone are the judges of
18 the facts in this case.

19 If during your deliberations you need to have
20 your recollection of the testimony refreshed, you may
21 have all or any portion of the testimony read back to
22 you.

23 Further, remember that under the law I am
24 responsible for explaining the law, not the lawyers.
25 If you think there is any difference between what the

1 lawyers may have said and what I say the law is, your
2 sworn duty as jurors is to follow my instructions on
3 the law as you have indicated that you would.

4 And fifth, if during the summations I sustain
5 an objection to a comment of a lawyer, then that
6 comment will be stricken from the record and you must
7 disregard it as if it had never been said. If I
8 overrule an objection, or on my own indicate that a
9 comment must be disregarded, my ruling indicates only
10 that the comment either does or does not violate one of
11 the rules of law set down for lawyers to follow during
12 summations. It's not an attempt I have an opinion
13 about what is said or about the facts of the case or
14 whether the defendant is guilty or not guilty.

15 Remember, under the law, you and you alone
16 judge what facts, if any, are proven, whether the
17 defendant is guilty or not guilty. Not I, and not the
18 lawyers.

19 All right. We now turn to the summations.
20 And you will hear first from Miss Burke. Thank you.

21 MS. BURKE: Good morning, ladies and
22 gentlemen of the jury.

23 THE JURY: Good morning.

24 MS. BURKE: The question before you now is
25 whether or not you believe that the prosecution has

1 proved their case beyond a reasonable doubt. The
2 question that you are going to have to answer basically
3 is whether or not Lorenzo McGriff is guilty of
4 attempted assault in the first degree and attempted
5 assault in the second degree. And the reason why you
6 should say no to those questions I am going to
7 elaborate for you.

8 In order to prove beyond a reasonable doubt,
9 'cause that's their burden, that Mr. McGriff is guilty
10 of attempted assault in the first degree, Mr. Mottola
11 and Miss D'Agostino would have to prove to you that
12 Mr. McGriff intentionally attempted to cause serious
13 physical injury to Mohammed Khalifa by means of a
14 deadly weapon or dangerous instrument. And they have
15 to also prove to you that he was not justified in doing
16 so.

17 So, I am going to break these elements down
18 for you.

19 Intentionally means that someone deliberately
20 has done something to be deliberate about something.
21 It means that you have -- it has to be done in a
22 careful and unhurried way. Careful and unhurried,
23 that's what deliberate means. That's how you prove
24 something was intentional.

25 Now I want you to look at the facts in this

1 case. And if you look at the facts in this case,
2 there's no way that you would come up with the
3 conclusion that Mr. McGriff's actions were deliberate,
4 careful, planned in any way, shape or form. And the
5 reason why you must come up with that conclusion is
6 because the incident was quick by all accounts. By all
7 witnesses accounts it was a very quick incident.

8 On the videos, the videos, each video is a
9 matter of seconds. Maybe a minute and a half on some.
10 Maybe 30 to 40 seconds on other videos. The action was
11 quick, according to all the witnesses involved.

12 Miss Toribio, she testified that she
13 witnessed the incident. She heard yelling. She saw
14 the encounter and she saw them run away.

15 Miss Guy, whose sister taped the video -- who
16 taped the incident says she heard yelling, she saw some
17 of the stabbing 'cause they went out of view and she
18 saw them run away.

19 The third witness says that she heard
20 yelling, she saw the incident, she saw the parties run
21 away.

22 And each woman that described the incident
23 said it was quick. It was a matters of seconds. It
24 was a matter of moments. It was not carefully planned.
25 It was not long, thought-out thing that it was.

1 Happened in an instant. That's how you know that the
2 encounter was not deliberate on the part of
3 Mr. McGriff.

4 The last video that you will see, and I will
5 play the videos again, shows that the encounter between
6 the two parties probably lasted maybe about sixty
7 seconds. Could not have been a deliberate encounter.

8 And the reason why it was not deliberate is
9 because Mr. McGriff did not plan on meeting Mohammed
10 Khalifa that day. He planned on taking his wife to
11 work as he normally does. He went to work, did his
12 job, wanted to enjoy his lunch hour in beautiful
13 downtown Brooklyn. Take his stroll for his daily
14 exercise.

15 He didn't plan on saying oh, let me meet up
16 with Mohammed Khalifa on Joralemon Street. Or let me
17 let him follow me. Oh, let me take out this instrument
18 and defend myself against him. Nothing was planned.
19 Everything was -- the only plan he had was to enjoy
20 your day. But that's not what happened. He did
21 encounter Mr. Khalifa.

22 The other element is serious physical injury.
23 I want to come back to his day in a minute.

24 You will know that Mr. Khalifa did not suffer
25 a serious physical injury based on the testimony of the

1 witnesses who all say yeah, he was bleeding, but he got
2 up and he chased after Mr. McGriff. He chased him for
3 blocks.

4 If you were seriously wounded, if you were
5 seriously injured, if you were seriously hurt, you're
6 going to stay there and wait for medical attention. Or
7 you may not be able to get up to wait for medical
8 attention. You are not going to chase somebody for
9 block after block after block after block, yelling at
10 them, and screaming at them. That shows that he was
11 not seriously injured.

12 The testimony of the witnesses say he was
13 bleeding but he was still screaming. Mr. McGriff's
14 testimony said that Mr. Khalifa followed him and
15 followed him and followed him.

16 The medical records that you're going to look
17 at will show you that he was not seriously injured. He
18 had superficial wounds.

19 Miss Boyd, the EMT person testified that he
20 didn't want her to touch him. He did not want her to
21 dress his wounds. He did not want her to or her
22 partner to tend to him.

23 That's not a man who is seriously, physically
24 injured. That's a man who has some superficial cuts,
25 not a serious physical injury.

1 But I'll go through the medical testimony
2 with you to make sure that you understand that fully.

3 In the medical records you're gonna see that
4 there was no damage to the arteries, there was no
5 damage to any major organs, there were no damage to,
6 there were no bones that were broken. Some of the cuts
7 were a centimeter, two to three centimeters. Had to be
8 stitched. Some weren't even stitched, some were just
9 dressed. So these stab wounds (indicating) were not
10 the deep stab wounds that you hear thinking puncturing,
11 penetrating wounds. They were superficial cuts, not
12 serious physical injury.

13 The third part is with the deadly weapon or
14 instrument. It is true that Mr. McGriff carried a wire
15 stripper with him, was referred to as a knife by
16 Mr. Mottola. And even Mr. McGriff may have said knife
17 on the stand, but when he was allowed to explain what
18 it was, he told you what it was. It's a little thing
19 that you strip wire with because he repairs headphones,
20 earphones and speakers with. It is not a knife. It is
21 a weapon that he carried with him because that's his
22 hobby, to repair items with it.

23 He didn't have it in his pocket thinking that
24 he would have to use it to defend himself against
25 Mr. Khalifa. But he did have this instrument and he

1 did use it against Mr. Khalifa.

2 The main issue and the issue that you should
3 focus on when you're in the jury room is whether or not
4 he is justified in using that instrument against
5 Mr. Khalifa. That's what this boils down to. Should
6 he have responded the way he did? Is he justified in
7 responding the way that he did?

8 The Judge is going to give you some jury
9 instructions on what justification is. But use your
10 everyday common sense when you are tackling this
11 question. Did Mr. Khalifa get what he called for? In
12 plain language, did his mouth write a check that his
13 body couldn't cash? Did Mr. McGriff respond to what
14 Mr. Khalifa asked for? Was Mr. McGriff justified in
15 defending himself physically with the amount of force
16 that he did against Mr. Khalifa?

17 The answer is, he was absolutely justified,
18 absolutely without question justified in responding to
19 Mr. Khalifa the way he did.

20 The reason why you should come up with that
21 conclusion is this. Mr. McGriff on his lunch hour is
22 walking down the street minding his own business. He
23 encounters a stranger, who bumps him. Elbows him
24 (indicating) purposely. Mr. McGriff tries to ignore
25 it, shake it off, continue on his way. But this

1 stranger wouldn't have it. This stranger wouldn't
2 stop. This stranger was relentless. This stranger
3 called him a nigger. This stranger called him a slave.
4 This stranger told him go back to Africa. Man he never
5 met before. Had never seen before. Had never had an
6 encounter before with him. Used these words when he
7 met Mr. McGriff.

8 I want to give you a brief history of the
9 word nigger.

10 MR. MOTTOLA: Objection.

11 THE COURT: Sustained.

12 MS. BURKE: Historically --

13 MR. MOTTOLA: Objection.

14 THE COURT: Sustained.

15 MS. BURKE: When the word nigger was used --

16 MR. MOTTOLA: Objection.

17 THE COURT: Approach, please.

18 (Whereupon, there was a discussion held at
19 the bench off the record.)

20 MS. BURKE: When Mr. McGriff was called the N
21 word he explained to you that he thought Mr. Khalifa
22 was a little crazy. A little off his rocker. Because
23 who in this day and age would have called somebody on
24 the street and say that to him? Especially a man
25 Mr. McGriff's size. He is six foot one, on the plus

1 side of 275 pounds. He is a big black man. He is not
2 the man that you walk up and say those words to.
3 Shouldn't say it to anybody. He is not the man you
4 should walk up to and say those words to.

5 But even though he was called this word
6 repeatedly, he tried to walk away. He tried flight.
7 He tried to get away. He tried to distance himself
8 from this racial hatred. He tried to distance himself
9 from this crazy man. He tried to distance himself from
10 this person who was using these vial words.

11 But Mr. Khalifa wouldn't have it.
12 Mr. Khalifa followed him down Joralemon Street, saying
13 slave, go back to Africa. Nigger.

14 Mr. McGriff kept walking. Mr. McGriff
15 changed his direction. Mr. McGriff crossed the street
16 to get away from the hatred. Mr. McGriff walked up the
17 block to get away from the racism. Mr. McGriff crossed
18 the street again to try to distance himself from this
19 man.

20 But Mr. Khalifa, who you are going to read in
21 the medical records was high on cocaine, continued to
22 follow him. This cocaine induced crazy man continued
23 to call him names, continued to walk after him.
24 Continued to follow him.

25 Now if you have a crazy person calling you

1 names and walking behind you, you walk faster. You try
2 to get away. You try to lose him in the crowd. But if
3 that person continues to follow you for block after
4 block after block, you get upset, you get concerned,
5 you become more acutely aware of what's going on. You
6 start fearing for your safety. Because the word nigger
7 isn't just a word, it's often times used with violence.

8 MR. MOTTOLA: Objection.

9 THE COURT: Sustained.

10 MS. BURKE: Mr. McGriff, he felt that he was
11 in danger. Mr. McGriff knew the history of the word.

12 THE COURT: Sustained.

13 Jury's to disregard the last statement.

14 MS. BURKE: Mr. McGriff tried to get away
15 from the hatred and the violence. 'Til it came a point
16 he even crossed in front of traffic, thinking this
17 guy's not going to follow me in traffic. I am going to
18 be able to get away from him. And he thought he had
19 lost him. Until he turned his back.

20 And when he turned his back, what he saw was
21 this man who is yelling these racist things, who is
22 yelling these ugly words, who is following him
23 repeatedly and repeatedly, block after block, what he
24 saw was the man bending down and picking up a brick
25 (indicating), putting it in a shirt and whirling it

1 around (indicating).

2 You could imagine what was going through
3 Mr. McGriff's mind as he saw this man, saying these
4 hateful things, and coming at him with a brick. Coming
5 at him with a dangerous, deadly instrument. Coming at
6 him, calling him names, and turning this thing
7 (indicating) around and around. Mr. McGriff felt that
8 his life was in danger and he was justified in feeling
9 that way.

10 So what did Mr. McGriff do? He defended
11 himself. He defended himself against the man wielding
12 the brick. He defended himself against the man who was
13 calling him hateful names. He turned, he confronted
14 Mr. Khalifa.

15 You heard the testimony of one of the
16 witnesses. She said I heard him say, you're going to
17 say that again? What do you think she was referring
18 to? She was referring to the words that Mr. Khalifa
19 was calling Mr. McGriff. She was referring to those
20 hateful words.

21 And Mr. McGriff tried to get Mr. Khalifa to
22 back up off of him. He didn't immediately pull out an
23 instrument and stab Mr. Khalifa. He told him get out
24 of here. He pushed him away (indicating). He tried to
25 intimidate him into turning away.

1 Mr. Khalifa did not turn away. Mr. Khalifa
2 still had that brick in his hand (indicating). He
3 still came after Mr. McGriff. Mr. McGriff tried to
4 walk away.

5 And you're gonna see the video, I will play
6 it in a minute, that when Mr. McGriff turned to walk
7 away, Mr. Khalifa took a step forward with that brick
8 in his hand. And the only thing left, the only
9 response left for Mr. McGriff to do was to protect
10 himself. And the way that he protected himself was to
11 take out this instrument and to stab Mr. Khalifa with
12 the instrument. They struggled. They fell into the
13 door front.

14 No one knows what happened inside because no
15 one saw what happened inside the store, but Mr. McGriff
16 stabbed Mr. Khalifa until he dropped the brick
17 (indicating). Until he was no longer a physical
18 threat. Until he no longer had that deadly weapon in
19 his hand. Mr. McGriff got up and ran away.

20 But it didn't end there. 'Cause Mr. Khalifa
21 still ran after him. Still followed him. Stab wounds
22 to his face, to his side, to his back. He is bleeding
23 profusely, according to some of the witnesses, but he's
24 still chasing after Mr. McGriff.

25 Why? Why is he so set on pursuing

1 Mr. McGriff? We don't know why. He is not here. He
2 didn't even come to testify. Other than seeing a
3 picture of him or a video of him, you don't know any of
4 the thoughts that were going through his mind at the
5 time that he pursued Mr. McGriff.

6 He is not here to tell you why he called
7 Mr. McGriff a nigger. He is not here to tell you why
8 he called him a slave. He is not here to tell you why
9 he chased after him block after block after block.

10 He is not here to tell you why he picked up
11 that brick. He is not here to tell you why he put it
12 in a shirt and swung it as if he was going to hit
13 Mr. McGriff with this brick. He is not here to tell
14 you why even after he had gotten stabbed by Mr. McGriff
15 he continued to pursue him. He is not here to tell you
16 why he continued to follow him block after block after
17 block. And still screaming these words at him. And
18 still saying these nasty things to him. And still
19 chase after him.

20 But because he had dropped the block -- the
21 brick, I am sorry, Mr. McGriff only continued to walk
22 away. You'll notice that as long as Mr. Khalifa did
23 not have that brick in his hand, Mr. McGriff walked.
24 Or ran. Or walked or ran or changed directions. As
25 long as he didn't have the brick in his hand.

1 But the moment he picked up that brick, the
2 moment he became a physical threat, the moment he
3 attempted to hurt Mr. McGriff with the brick instead of
4 just his words, Mr. McGriff turned and defended
5 himself, and Mr. McGriff was absolutely justified in
6 doing so.

7 Mr. McGriff gets arrested by the police,
8 Mr. Khalifa is worked on by the EMT. And even while
9 he's being treated, or attempted to be treated by EMT,
10 he's continuing to say these vial things.

11 You saw Miss Boyd up here. She was trying to
12 render aid and assistance to this man. What did he do?
13 He said you nigger bitch. Get your hands off me.
14 Don't touch me nigger bitch. Don't touch me.

15 These are the words he said to the person who
16 was trying to render aid to him. He was still out of
17 control. He was still in a rage. He was still saying
18 these racist, vial things. He was still acting out of
19 control.

20 This is the man that Mr. McGriff encountered
21 the entire time. This is the man that Mr. McGriff
22 defended himself from. This is the man that
23 Mr. McGriff was absolutely justified in defending
24 himself against.

25 I'm going to play the tapes so I can show you

1 exactly where Mr. Khalifa picked up the brick and show
2 you that Mr. McGriff was walking away up until that
3 point so you can see with your own eyes that
4 Mr. McGriff was not the aggressor. That Mr. McGriff
5 didn't start this thing. That it didn't start when
6 Miss Toriio saw it. It didn't start where the portion
7 where Miss Guy saw it. It didn't start when the third
8 witness saw it. It started way before that.

9 It didn't end when Mr. McGriff confronted
10 Mr. Khalifa. It didn't end even when police arrested
11 Mr. McGriff. It didn't even end in the ambulance when
12 Mr. Khalifa was calling the treating people, the people
13 who were treating him, these vial, nasty names.

14 You'll see that his behavior continued even
15 in the hospital where he had to be strapped down in
16 order to be treated. He was acting like a madman. A
17 madman who even refused medical attention to the point
18 where he signed himself out, less than 24 hours later.
19 The next morning Mr. Khalifa signed himself out of the
20 hospital.

21 You are going to be able to read the medical
22 records and it's going to show you that he pulled the
23 I.V.s out of his arm. He took off his hospital gown.
24 He demanded his clothes back. The clothes that had his
25 blood on it. The clothes that he had on the day

1 before. He wanted those clothes back. And you will
2 see that security had to escort him off hospital
3 property.

4 But Mr. Khalifa wasn't here to tell you any
5 of that stuff. He's missing. Where is he? Why isn't
6 he here to face Mr. McGriff? He followed him for many,
7 many blocks. Why isn't he here to tell you what
8 happened? The only person who came here to tell you
9 what happened from the beginning to the end is the man
10 that sits on trial before you. The man that they're
11 saying intentionally assaulted Mr. Khalifa.

12 And I am telling you Mr. McGriff was
13 justified in answering the call that Mr. Khalifa put
14 out there. Mr. McGriff, when he could not run any
15 further, when he couldn't walk any further, he stood
16 there and defended himself.

17 Bear with me, ladies and gentlemen.

18 (Whereupon, a videotape was played.)

19 MS. BURKE: It's almost there.

20 MR. WITTWER: Dim the lights?

21 MS. BURKE: Just give me a moment. I need to
22 make sure I can see the numbers on the computer.

23 (Whereupon, there was a pause in the
24 proceedings.)

25 MS. BURKE: May we have the lights, please?

1 You see Mr. McGriff is coming across the
2 street here (indicating)? And in his testimony he said
3 that he ran through traffic trying to avoid Mr. Khalifa
4 (indicating). There is Mr. Khalifa right behind him.
5 You saw where he bent down and picked up the brick.

6 (Whereupon, the videotape was stopped.)

7 MS. BURKE: I am just going to back it up
8 briefly.

9 (Whereupon, a videotape was played.)

10 MS. BURKE: Your Honor, may I have the laser
11 pointer?

12 (Whereupon, the videotape was stopped.)

13 MS. BURKE: This is this.

14 THE COURT: Yes, that's it. Red button.

15 MS. BURKE: One moment.

16 (Whereupon, there was a pause in the
17 proceedings.)

18 (Whereupon, a videotape was played.)

19 MS. BURKE: Now Mr. McGriff testified that he
20 had already gone through Joralemon Street, had crossed
21 over to the Borough Hall side and (indicating) crossed
22 in front of traffic. And you see Mr. McGriff slowly
23 walking. But behind him (indicating) there's
24 Mr. Khalifa, he just bent down and picked up a brick.
25 He's wrapping it in his shirt and he's just whirling it

1 around his head. There's Mr. Khalifa (indicating)
2 still pursuing Mr. McGriff with this brick in his hand
3 inside his shirt.

4 You'll be able to review this film when you
5 go back in the jury room. And here is Mr. McGriff
6 coming back to confront Mr. Khalifa (indicating)
7 because he was tired of running. He saw him with the
8 brick in his hand and he felt his life was in danger.
9 They had an encounter. Mr. McGriff asked Mr. Khalifa
10 to back up off of him. He pushed him away. He told
11 him to leave him alone.

12 You see that he tried to get away from
13 Mr. Khalifa, but that's not what happened. Mr. Khalifa
14 still had this brick in his hand, whirling it around
15 and coming after Mr. McGriff.

16 You'll also see, I am also going to show you
17 the other video that Miss Guy produced which has a
18 close-up encounter of the two gentlemen.

19 (Whereupon, the videotape was stopped.)

20 MS. BURKE: In the video from Miss Guy you
21 can see a bit more clearly that Mr. McGriff tried to
22 walk away again, even though Mr. Khalifa had this brick
23 in his hand.

24 Bear with me, ladies and gentlemen. This is
25 a fast video.

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1 (Whereupon, a videotape was played.)

2 MS. BURKE: This is a video from Miss Guy.

3 And you see here -- you don't see anything.

4 I am going to try to back it up.

5 You see Mr. McGriff telling him to get away.

6 Mr. McGriff turns. And you see in the hand of

7 Mr. Khalifa that he's swinging, he's swinging the

8 brick. It's not very clear but you can see at that

9 moment McGriff tried to walk away and Khalifa does, is

10 coming forward and you see that there's the brick

11 swinging in his hand.

12 (Whereupon, the videotape was stopped.)

13 MS. BURKE: Lights, please.

14 So when Mr. McGriff turned and defended

15 himself against Mr. Khalifa, he took that instrument

16 that he had, and you saw the picture.

17 I am just technologically challenged today.

18 THE COURT: You have to switch the...

19 THE CLERK: I can do it from here.

20 THE COURT: Let him do it.

21 MS. BURKE: Thank you.

22 (Whereupon, there was a pause in the
23 proceedings.)

24 MS. BURKE: You see in this picture -- is
25 that how high as it goes?

VdV

1 You see in this picture the instrument that
2 Mr. McGriff had, but you also see in this picture
3 (indicating) the shirt that Mr. Khalifa had.

4 Now, the testimony by all three of the
5 People's witnesses, all three women that testified who
6 said they saw the stabbing, not one of them, not one of
7 them said that they saw anything in Mr. Khalifa's
8 hands. You clearly see he had something in his hands.
9 You clearly saw on the video that he bent over, picked
10 up the rock and put it in that shirt that's in his
11 hand.

12 Why would all of three of the witnesses not
13 admit that they saw this item? I don't know. Why did
14 all three of the prosecution's witnesses say that they
15 didn't hear any racial slurs? That they didn't hear
16 the word nigger, that they didn't hear the word slave,
17 that they didn't hear the words go back to Africa.

18 The word they did hear is, you're going to
19 say that again? But they didn't hear anything else.
20 Not one of them said that they heard his words.

21 But the one witness that we called other than
22 Mr. McGriff was the EMT lady, Miss Boyd, she heard the
23 words. The one witness we called says yes, he was
24 acting like that, he was saying those words, he was
25 screaming and yelling those words.

1 Now all three of the ladies said they heard
2 yelling. All three of the prosecution witnesses said
3 they heard yelling, but not one of them said we heard
4 those words. Why is that? But the one witness we
5 called who is not an interested party clearly heard
6 those words. All three of the women said they, this
7 man did not have anything in his hands.

8 This is the picture with something in his
9 hands. The video with something in his hands. And
10 what he had in his hands was a brick in a shirt
11 (indicating) that he was whirling and coming after
12 Mr. McGriff with. What he had in his hands was a
13 dangerous, deadly instrument.

14 And coupled with the words that he was
15 saying, Mr. McGriff was frightened. Mr. McGriff was
16 alarmed. Mr. McGriff was annoyed. Mr. McGriff could
17 only do the one thing that he could do, and that is
18 protect himself, 'cause he had this man coming after
19 him saying nigger. Slave. Go back to Africa.
20 (Indicating).

21 That's what Mr. McGriff was facing. That's
22 what he was facing when he took out this instrument and
23 he stabbed Mr. Khalifa. He did it to save his life.
24 He did it to protect himself. He did it to stop this
25 cocaine induced, crazy, racist man from hurting him.

1 And you don't have to take my word that
2 Mr. Khalifa was crazy and cocaine induced. You heard
3 from Miss Boyd.

4 I am going to hold this so you can see the
5 words.

6 MR. MOTTOLA: The button on top you can zoom
7 in.

8 MS. BURKE: Thank you.

9 MR. MOTTOLA: You're welcome.

10 MS. BURKE: You heard from --

11 MR. MOTTOLA: The button's on the right.
12 Yeah.

13 MS. BURKE: Give me one second, people.

14 MR. MOTTOLA: There you go.

15 MS. BURKE: I am learning this stuff, too.

16 This is the report that was put in by
17 Miss Boyd. It's her signature at the bottom where she
18 says the patient was combative -- thank you --
19 uncooperative, verbally abusive and assaulted crew. He
20 was very combative. Uncooperative. Verbally
21 aggressive and assaulted crew.

22 This man -- lights, please -- after being
23 stabbed allegedly five times, four times, five times,
24 he's still fighting people. He's still using the N
25 word. He's still struggling. He's still attempting to

1 hurt other people.

2 And even in the hospital, you're gonna be
3 able to read the hospital records, even in the hospital
4 he was the same way. You're gonna get the entire
5 medical file and you're gonna be able to read this
6 hopefully better than I am able to read it now, where
7 it says, the patient was brought in by EMS highly
8 uncooperative and agitated.

9 The patient stood up on the stretcher and
10 screamed out religious statements prior to cooperating
11 with the E.R. and surgical team at the trauma bay.
12 Patient continues to refuse to allow staff to evaluate
13 and assess.

14 That was his behavior in the hospital. As
15 soon as he got in the hospital.

16 You'll see on page seven of the medical
17 reports I've highlighted in my portion, it says, when
18 asked to slide himself over, the patient stood up naked
19 on the EMS gurney, stepped over to the bed and remained
20 standing and shouting at the ED staff while bleeding
21 from several wounds.

22 He's bleeding and he's still uncooperative.
23 He's still combative. Patient continued to be
24 argumentative and aggressive, not providing
25 information, not allowing a medical evaluation, and not

1 showing medical capacity.

2 You'll also read on page 25 of the medical
3 records cocaine, in his urine, positive. He was high
4 on cocaine when he confronted Mr. McGriff.

5 And even the next day on page 53 of the
6 medical record you will have an opportunity to review
7 on your own. Discharge note. Patient signed out
8 against medical advisement. Refused clothing. Removed
9 all I.V.s access and escorted by security off hospital
10 property.

11 He was told of the risk of being prematurely
12 discharged and they attempted to get his clothing for
13 him. They even offered him scrubs but the patient
14 refused and threatened bodily harm if we would not let
15 him go.

16 This is Mr. Khalifa's pattern. This is
17 Mr. Khalifa that everyone knows. Mr. Khalifa threatens
18 bodily harm apparently to anybody in his path. Clearly
19 threatened Mr. McGriff. Clearly assaulted the EMT
20 worker, she testified to that. Clearly threatened the
21 medical staff who were trying to treat him. And sign
22 himself out against medical authority.

23 This man, this racist, this violent person
24 encountered Mr. McGriff, and Mr. McGriff could do the
25 only thing that he knew to do to protect himself from

1 this type of man. This man who is not before you, who
2 has never come to court before you, has never
3 testified. You don't know his story, the story
4 everyone else tells about him; violent, racist,
5 uncooperative, aggressive, argumentative, irrational,
6 racist.

7 That's the man that Mr. Khalifa is. That's
8 the man that the People are trying to say that
9 Mr. McGriff is not justified in defending himself
10 against. But the burden is on them. The burden is on
11 them to prove that Mr. Khalifa -- that Mr. McGriff was
12 not justified in defending himself against Mr. Khalifa.

13 And I submit to you, ladies and gentlemen of
14 the jury, they haven't done that. They haven't done
15 that at all. And when you go back into your
16 deliberations and you talk about the facts of the case,
17 there are some truths that you will have to come up
18 with. Mr. McGriff stabbed Mr. Khalifa, no doubt in
19 anybody's mind. Three witnesses testified to it.

20 Was he justified? That's the issue. That's
21 the crux of this case. Was he justified in doing so?
22 And beyond a reasonable doubt. He absolutely was
23 justified in doing so.

24 And the only verdict that you should come
25 back with is a verdict of not guilty. Not guilty to

1 attempted assault in the first degree. Not guilty of
2 assault in the second degree.

3 On behalf of Mr. McGriff, that is the only
4 verdict you should come back with. Thank you.

5 THE COURT: Thank you.

6 (Whereupon, there was a pause in the
7 proceedings.)

8 THE COURT: Mr. Mottola, do you need a minute
9 to set up?

10 MR. MOTTOLA: Yeah. If you can give me one.

11 THE COURT: Okay. Ladies and gentlemen, I
12 will have you step into the jury room for just a few
13 minutes. Stretch your legs, use the facilities.
14 Please do not discuss the case amongst yourselves.

15 I am going to give the People a minute to set
16 up before their summation. See you in a minute.

17 (Whereupon, the jury left the courtroom.)

18 (Whereupon, there was a break in the
19 proceedings and then resumed shortly thereafter.)

20 COURT OFFICER: Line them up, Judge?

21 THE COURT: Yes.

22 (Whereupon, there was a pause in the
23 proceedings.)

24 COURT OFFICER: Ready for the jury, Judge?

25 THE COURT: Yes.

1 COURT OFFICER: Jury entering.

2 (Whereupon, the jury entered the courtroom.)

3 THE CLERK: Okay. The jury panel's once
4 again present and properly seated.

5 Does each side waive the jury roll call?

6 MR. MOTTOLA: So waived.

7 THE CLERK: Miss Burke.

8 MS. BURKE: Yes. So waived.

9 MR. WITTWER: Yes.

10 THE CLERK: Thank you, Mr. Wittwer.

11 THE COURT: Mr. Mottola, whenever you're
12 ready.

13 MR. MOTTOLA: Yes. Thank you, Your Honor.

14 You want your motive for that? When
15 Mr. McGriff testified he gave it to you. And Janelle
16 Toribio, she also told us what the motive for that
17 violent assault was. You are gonna keep on saying what
18 you are saying. You are gonna say it again.

19 We are not here because Mohammed Khalifa ever
20 had a brick, ever had a weapon at all. He was crude,
21 he was antagonistic. He followed the defendant several
22 blocks. He was never armed. He never had a weapon.

23 And make no mistake, he is the victim in this
24 case, not Mr. McGriff. Okay.

25 We are here because given the choice of

1 fleeing the situation, fleeing from perhaps a crazy,
2 unarmed man, resolving the dispute in another way, he
3 chose violence, ladies and gentlemen. He chose to
4 remove from his pocket the very knife that you've seen
5 that's in evidence and plunge this into an unarmed
6 man's body in his flesh again and again and again, and
7 three more times once the unarmed man fled from him.
8 That's why we are here.

9 He is not a victim. It wasn't self-defense.
10 It was assault.

11 Now, there's no question the defendant and
12 Mohammed Khalifa had an encounter that day. Okay.
13 They met each other on the street, they had a
14 conversation, they had a fight. There is no question.
15 There is no question the only person who suffered any
16 injuries at all is Mohammed Khalifa. There wasn't a
17 scratch on the defendant's body. You heard that from
18 the officer. You heard from it from the defendant.

19 There is no question the knife, the weapon
20 introduced in the fight came from this man's pocket.
21 There is no question given the choice after he attacked
22 and assaulted Mr. Khalifa of staying there, talking to
23 the authorities, securing this boulder or brick for us,
24 he didn't do that. He fled the scene. He fled almost
25 a half mile. We are going to go through the path he

1 took.

2 Given the choice of calling 911 at any point
3 on this path, he didn't do so. Those are his choices.
4 That's why he is in this chair. Because he chose to
5 assault an unarmed man.

6 Now this whole case hinges on one thing.
7 Credibility. We spoke in voir dire about how you judge
8 credibility, right? You listen to his story, you see
9 if it makes sense. You look at someone's body language
10 and their demeanor.

11 Three women who do not know the defendant,
12 they do not know the victim, they do not know each
13 other. They just so happen to be on Court Street that
14 same day at that same moment right when this fight had
15 broken out. They came in court, they sat in that
16 witness chair, they swore under oath tell each and
17 every one of you the truth. I submit that they told
18 you exactly what they saw. They have no bias here.
19 They have no motive to lie for either party.

20 These women again and again, I asked them was
21 anything in Mr. Khalifa's hands? Did you see any
22 weapon or any brick or any object? And unequivocally
23 each woman told you no, no, no. Even when pressed on
24 cross examination.

25 So who are these women?

1 Well first you heard from Janelle Toribio.
2 She was on Court Street crossing towards 65th Street,
3 she is a school teacher going to get fingerprinted. At
4 some point she gets questioned by Mr. Wittwer pointed
5 out she was seven feet or so right from the witness box
6 to about where I am standing now. Seven feet from
7 these two men. Unobstructed view. And she told you
8 without a doubt no weapon, no object, no brick in the
9 hands of Mr. Khalifa.

10 If you need to hear any of the testimony read
11 back when you are deliberating, feel free to do so.

12 Now.

13 "QUESTION: -- on page 8 -- did you see him
14 with any kind of weapon or object?

15 "ANSWER: No.

16 MR. MOTTOLA: Page 16.

17 "QUESTION: So during the whole time, did you
18 see the man in the green shirt with any weapon?

19 "ANSWER: No.

20 "QUESTION: Did you see him strike the larger
21 man at all?

22 "ANSWER: No.

23 MR. MOTTOLA: One last time on cross.

24 "QUESTION: And from that distance were you
25 able to see any weapons at all in the man in the green

1 shirt's hands?

2 "ANSWER: No, I did not.

3 MR. MOTTOLA: That's Janelle Toribio.

4 Kadeisha Guy. Who is Kadeisha?

5 Well Kadeisha was in that car, right? We
6 know Kadeisha saw because she recorded most of it for
7 us. She is driving down Court Street, right. The
8 video that Miss Burke played, the first one from
9 Livingston Street, it picks up, you see the two men
10 backing up, backing up, backing up. They get to the
11 pay loader, then they're off our screen.

12 That's where Kadeisha guy's car was. She is
13 in a better spot than the person recording the video.
14 Because she is in the driver's seat. She is in front
15 of the person who is actually recording with that
16 phone. Okay. She tells us something very simple.

17 I asked her.

18 "QUESTION: -- page 4 -- do you ever see any
19 objects or any kind of weapon in the man in the green
20 shirt's hand?

21 "ANSWER: No.

22 MR. MOTTOLA: She's right there when they
23 bang into her car. Someone in her vehicle took this
24 photo (indicating). The photo that's in evidence, that
25 is People's 8 in evidence.

1 You saw the tape for yourself. Look at the
2 way this sweater's hanging. You think there is a brick
3 in there or there is a boulder in there? The sweater
4 is dangling over the man's arm. It's August. He has
5 his sweater off. Crazy or not, he knows it's hot.
6 It's certainly not balled up for the way counsel
7 demonstrated for you.

8 You cannot show anything in the video, shows
9 anybody whirling anything over his head. It didn't
10 happen. It was a story embellished by the defendant.
11 We will get to that.

12 First let's talk about potentially the most
13 damning for the witness for the defense. That's
14 Miss Ashley Reyes. Now Ashley was the last civilian
15 you heard from from the People. She is in front of
16 that construction site. She is in the middle of the
17 sidewalk somewhere across the street the defendant and
18 Mr. Khalifa ends up. She tells you about a five feet
19 from her, that's after the initial encounter we see in
20 Miss Guy's video. After the defendant struck
21 Mr. Khalifa in the stomach or side at least twice, he
22 breaks away, he runs towards Miss Reyes.

23 Whatever fight was happening, the fight is
24 over. And now it wasn't enough. It was not enough for
25 Mr. McGriff. Okay. No one talks to Mr. McGriff like

1 that. Right? All six foot one, 300 pounds of him. He
2 is not used to this.

3 So he chases after the man he already stabbed
4 twice, the unarmed man, the fleeing man rushing towards
5 Ashley Reyes, he chases him. And when Mr. Khalifa
6 falls down, he stabs him three more times, including to
7 the head. You heard that.

8 Her testimony page 117.

9 "QUESTION: Do you recall the man in the
10 green holding any object like a brick or a rock?

11 "ANSWER: No.

12 "QUESTION: Do you recall the man in the
13 green at any time striking the man with the knife, to
14 your memory?

15 "ANSWER: No.

16 MR. MOTTOLA: Mr. Khalifa was fleeing. He
17 was fleeing. Make no mistake about it. He wasn't
18 caught up in a fight with a man 130 pounds heavier than
19 him, six inches taller than him. He stabbed him twice.
20 He doesn't have superhuman strength, despite the
21 cocaine in his system. He is the victim. He is trying
22 to get away. He is the victim, not the defendant.

23 There was someone else we heard from who
24 doesn't mention a brick or a rock.

25 (Whereupon, an audiotape was played.)

1 (Whereupon, the audiotape was stopped.)

2 MR. MOTTOLA: Don't you think if she saw the
3 man in the green shirt with a rock, right, a boulder as
4 he described it, right, a large dramatic brick the
5 defense wants to show you, whirling anything, holding
6 anything, striking anything, she would have told you?
7 Maybe she would have mentioned it? She didn't mention
8 it. And I submit she didn't mention it because, like
9 the other three women, it didn't happen. It wasn't
10 there. She didn't see it. Because it didn't exist.

11 Now you have to judge the credibility of
12 these three women and their motive to tell you the
13 truth. And you have to weigh that against the
14 credibility of the defendant.

15 Now the defense has no burden in this case,
16 that's very clear. He did not have to testify. He did
17 not have to do anything. But he did. And once he put
18 himself in that witness chair you have -- he is subject
19 to the same rules of credibility like any other
20 witness. You have to evaluate what he's saying, why is
21 he saying it.

22 And you're allowed, actually the Judge will
23 give you the law, he is what's known as an interested
24 witness by law. He is the only person who is
25 interested in the verdict that you people, you return.

1 'Cause he is the one on trial. Okay.

2 Miss Reyes, Miss Toribio, right, Miss Guy,
3 their involvement with this case is done. They come in
4 and they left. He is the only one left who is
5 interested in your verdict. You are allowed to
6 consider that when you look at his testimony.

7 Let's do that.

8 I submit to you everything he told you up
9 there, was an embellishment in some way. Some of it
10 was a straight up lie.

11 Now, you had a long time to look at the
12 defendant. He was in the chair all morning Friday. He
13 answered questions on direct, he answered questions on
14 cross. The first thing he wants to tell us is that he
15 wasn't mad. He wasn't mad August 11 of 2015.

16 I wasn't mad. I was walking down the street
17 trying to enjoy my lunch. A random person I don't
18 know, he is following me, he is saying these horrible
19 things. Horrible, terrible things that I am not
20 apologizing for. Okay. Terrible things should never
21 be said.

22 He wants to say no, I wasn't mad that I was
23 being told to go back to Africa or I am a slave. I
24 wasn't mad, I was fearful.

25 Okay. Ask yourself why he is saying that to

1 you. He is saying that because he has to. He needs
2 you to believe that he was, that he had this fear from
3 this tiny man, has no weapon, he had this fear. I had
4 no choice but to pull out my knife, because otherwise
5 he was going to hit with this brick no one else saw,
6 that's why he tells you this. He exaggerated that part
7 of the story.

8 You saw, I am going to play you Miss Guy's
9 video, but before I do, again the Court Street video.
10 You see Mr. Khalifa bend down. I am not saying you
11 don't. He definitely bends down. If he was picking up
12 an object as large as this rock, I submit you would
13 have seen it, okay.

14 His feet are unobstructed. He bends down,
15 picks up something. What he picks up we will never
16 know. Maybe he didn't pick up anything at all, but he
17 certainly didn't swing it above his head. Someone else
18 would have seen it. Couldn't have been that large.
19 Certainly not the size of the brick they are
20 presenting. You can use your own eyes. You make that
21 determination for yourself.

22 But the defendant's back is to Mr. Khalifa.
23 They're five or six feet apart. The defendant turns
24 around, clear as day. It's on the video. He turns
25 around and he begins walking (indicating), I submit to

1 you, menacing towards the unarmed man. He is walking
2 towards him. Look where they start in the first video.

3 About that red van, by that red truck, right.
4 They end up almost by the corner where Miss Guy is.
5 Mr. Khalifa backed up almost half of an avenue, ladies
6 and gentlemen, because this man has his knife out
7 (indicating).

8 You know what, you don't walk around Brooklyn
9 and call me those words. I am going to teach you a
10 lesson. It's not going to be with my fist, it's not
11 going to be with my wire stripper, it's going to be
12 with that knife.

13 I am going to switch this over.

14 (Whereupon, a videotape was played.)

15 THE COURT: You want the lights on or off?

16 MR. MOTTOLA: I am sorry, officer. If you
17 hit the lights.

18 Just start from the beginning, Stephanie.

19 Look at the way he's marching or walking
20 towards Mr. Khalifa. Mr. Khalifa's the one backing up.
21 The defendant is the one with his right hand cocked and
22 he's taking these steps. And now he has the man
23 grabbed.

24 I ask you, look at the way the sweater hangs
25 in the video, again, similar to the photo. This

1 sweater is dangling. There is no eight or ten inch
2 boulder in that sweater, ladies and gentlemen.

3 Watch the tape again. Watch it again.

4 Let it play.

5 You have seen this video enough. I will not
6 bore you with it. I am playing to the end for one
7 point we will get to later.

8 This fight takes thirty seconds or so. Tape
9 is running. There goes Mr. McGriff running as fast as
10 he can.

11 Officer, you can turn the lights on, please.
12 Thank you.

13 (Whereupon, the videotape was stopped.)

14 MR. MOTTOLA: What does he tell us, right?
15 He tells us he grabs him. He grabs Mr. Khalifa. We
16 know that. Right? It's in the photo he grabs him.
17 And then we see what he does right with that knife,
18 vicious undercuts twice.

19 I submit that's where the, you know, the two
20 left stab wounds in the back came from. Those first
21 two strikes. He has now struck a man with a knife
22 twice. You saw the way he was swinging. As vicious as
23 he could, okay.

24 He wants to tell you August 11, I wasn't mad.
25 I wasn't angry.

1 We saw him in court on Friday. You had a
2 chance to judge his demeanor. He is in court under
3 oath. He is on trial. There is a Judge next to him.
4 Jury's here. There are people in the gallery. We were
5 all here. Court officers were here. Within five
6 minutes of answering my questions I submit to you he
7 became extremely angry. Remained that away all
8 morning. You be the judge of that.

9 But as angry as he was in court answering
10 questions, he was ten times angrier August 11, 2015
11 when a man he didn't know was telling him go back to
12 Africa.

13 He won't even give us that. He won't tell us
14 that he was angry. Being angry is not a crime. He
15 won't even give us that part. Okay.

16 Imagine what he will say or how he will
17 interpret this knife, right, or the fear that he will
18 exaggerate for you. He won't even tell us he was
19 angry. Of course he was angry. How could you not be
20 angry? But no, I was afraid. It doesn't make sense.

21 You know what else doesn't make sense? He
22 has the man grabbed here, he stabbed him twice. What
23 does he tells you, right? I asked him.

24 You didn't have to pull out this knife. You
25 didn't have to stab that man. You had your hand cocked

1 back with as much strength as a man his size has. Why
2 didn't he, couldn't he punch him in the face again and
3 again with that same right hand instead of pulling out
4 the knife, crack him in the face?

5 You know what, Mr. Khalifa probably deserved
6 that. If that happened we wouldn't be here. He
7 wouldn't be in that chair. He didn't do that. It
8 wasn't because of a brick. It was because he was
9 teaching him a listen. Here is how I solve my
10 problems. It's with my knife.

11 Remember again what Ashley told us. The
12 defendant tells us I stabbed him twice. He was still
13 holding on. He has all this strength, he is holding on
14 to me. He wouldn't let go. I had to stab him three
15 more times. And then he finally drops the brick and
16 now I was able to run away.

17 Well Ashley tells us that those extra stabs,
18 those three other stab wounds happened after
19 Mr. Khalifa broke away, and when he was running in her
20 general direction, okay.

21 This is the part that I really want you to
22 focus on, especially when we get to self-defense. Page
23 113.

24 "QUESTION: Was there anything on the street
25 that was blocking your view of these two men?

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1 "ANSWER: No.

2 MR. MOTTOLA: Page 114.

3 "QUESTION: What happened after that?

4 "ANSWER: It was when I noticed that two
5 people were running towards me that I decided to move
6 slightly out of the way in front of the store that was
7 with the construction. I then noticed the one
8 gentleman was chasing the other gentleman and there was
9 a knife in his hand. That's when the one person fell
10 into the construction site of the store.

11 At that point the other gentleman was already
12 stabbing him, and at that point you can see there was
13 blood coming out.

14 "QUESTION: So the record is clear, what is
15 the race of the person who was chasing him?

16 "ANSWER: The Africa American was chasing the
17 Caucasian man.

18 "QUESTION: How close did they get to you?

19 "ANSWER: At that point, they were about five
20 feet from me.

21 MR. MOTTOLA: Five feet away, unobstructed
22 view. Her testimony is as clear as day. Mr. Khalifa
23 stabbed and he is fleeing and then he's pursued by the
24 defendant. He is stabbed again and again and again.

25 When someone's back is to you, they're

1 running, that's not self-defense. That cannot be
2 self-defense under our law, ladies and gentlemen. We
3 are going to get to that. Okay. We are going to get
4 to the law, but before we do, you know what happened,
5 right? We know the whole incident.

6 Counsel did a great job talking about the
7 whole fight. She didn't mention a thing that happened
8 after that. I submit everything that happened after
9 the stabbing, including the defendant running away, is
10 even more damning behavior. It shows you what he was
11 thinking on this day. Okay. It shows you his intent.
12 Shows you exactly what he was trying to do, okay.

13 Let's start with first him running. First he
14 tells you I couldn't run from, I couldn't run from
15 Mohammed Khalifa. I couldn't run. I was winded, I
16 smoke, or I was walking.

17 He came up with a thousand reasons. Again,
18 why he couldn't run away. So he doesn't run away from
19 the man, but he pulls out a knife, fights him for
20 thirty seconds, throws as hard as he can, same knife,
21 in his body. He had no trouble running away after
22 that. Not as winded as he was, as tired as I imagine
23 he might be after stabbing and chasing a man. He ran
24 away after that.

25 He tells you I couldn't, I had to go.

1 Because Mr. Khalifa's so crazy he is going to get up,
2 he is going to keep attacking me even though I stabbed
3 him five times. Again, exaggeration and embellishment.

4 No one's saying Mr. Khalifa's is a good
5 person. Doesn't mean he is not protected by our law.
6 He was stabbed five times. There is no testimony
7 outside of the defendant that he ever had a weapon.
8 But he is still a threat. Still a threat to the
9 defendant. That's what he will have you believe, okay.

10 Could he have waited on scene? Of course he
11 could have. The man's down, prone. He stands him,
12 over him. He is already twice his size. He could have
13 him on scene but he leaves. Why did he leave? I don't
14 know. He didn't really answer this. I guess he had to
15 get back to work. But we know he could have waited.

16 I have a reason why he might have left. He
17 is on Court Street 1 o'clock in the afternoon. Dozens
18 of people are out, maybe a hundred people. You have
19 seen the video. He just chased a man, he knocks
20 Mr. Khalifa into that construction site, right?

21 We know from Janelle Toribio also they went
22 into the construction site. She told us there are
23 actually construction workers in that site that she saw
24 them there, people come out.

25 If you watch the video, dozens of people walk

1 by. You think maybe that's why he left? He didn't
2 want to wait around? Because all these people are on
3 the scene, you know, they're going about their lives.
4 When they look up, there is this man stabbing another
5 man, then he runs away before anyone can identify him.
6 Before anyone can figure out what happened he's gone.
7 Because he is the one who is the aggressor here, okay.
8 That's why he left the scene. Wasn't because he was
9 afraid of the man that's on the ground who he stabbed
10 five times.

11 911. Doesn't call 911 either, right? He
12 doesn't have to call 911. No obligation. But he had a
13 cell phone, he told us that. And again, he didn't
14 call. Why not? I am afraid. He was afraid.

15 You know, Mr. Khalifa's following him, I have
16 all this anxiety, I can't call 911. Okay. He couldn't
17 call 911 when he went right, so he is up, he runs and
18 he is going, this is his path here, this is People's 12
19 in evidence.

20 He couldn't call 911 when he runs towards
21 Schermerhorn Street? He couldn't pull out this phone,
22 say hey, there is a crazy guy. You know, he has that
23 weapon, following me. I am in fear of my life.

24 He couldn't have done that? He could have.

25 How about when he got to Clinton Street?

1 Could he have called 911 then? He could have.

2 He went out of his way to go to Atlantic
3 Avenue. He then goes all the way to Boerum, ultimately
4 he goes down all the way to Bergen. He couldn't call
5 911 at any point? Of course he could have. He says I
6 couldn't. He could have. I will tell you why he
7 didn't.

8 He did not want to interact with the police
9 that day. Because he was not under attack by
10 Mr. Khalifa, okay, he wasn't the victim. He was the
11 aggressor. He was the man who had the knife and he was
12 hoping to get away with it.

13 He almost made it back to work, he got real
14 close, but all these good samaritans, pedestrians on
15 the street and Mr. Khalifa who followed the defendant.
16 They pointed the officers at each location to the next
17 point, spot, pointed up the block, up the block.
18 Eventually they caught the man hiding behind the van.

19 We will get to that, but before we do that,
20 look at the actual path he takes. Okay. The stabbing
21 happens on Court Street, Court and Joralemon. He tells
22 us he works Baltic Street, which is towards the bottom
23 of the map, Baltic between Court and Clinton, okay. He
24 is already on Court. Why can't he just run down the
25 street if he runs down Court Street, right? Those nine

1 blocks he hits Baltic, his job is right there. Okay.
2 He zigzags.

3 Look at this path. He zigzags up Livingston
4 to Clinton Street. He then goes against the vehicular
5 traffic on Clinton Street, which I submit to you is
6 extremely suspicious. He is going against the traffic
7 to dodge the police. The stabbing happened on Court.
8 That's where the witnesses are. That's where the
9 police is going. He, that's where they are canvassing.

10 He goes to Clinton, hopes to hide on a back
11 street. He hits Atlantic and Clinton. He walks past
12 Court again. He overshoot this, goes to Boerum.

13 If he is going back to his job, what is he
14 doing? Why is he going from Clinton to Court past
15 Court to Boerum, then down to Bergen? He is trying to
16 stay off the main road. Same road that dozens of
17 people saw him stab an unarmed man. He is hiding. His
18 actions show you that.

19 Police Officer Louard tells us that. Officer
20 Louard, he tells us he gets the call, goes to Court and
21 Livingston and neither the defendant nor the victim are
22 there. So, he starts canvassing. He ends up, he goes
23 against the traffic on Clinton. People point, he goes
24 to Atlantic. They are pointing. He keeps going.
25 Eventually he finds the victim. He finds Mr. Khalifa

1 bleeding from his five stab wounds. Tells him he is
2 laboring or he tells us he is laboring. He says sit
3 down, stop right there. Mr. Khalifa, he says, was
4 cooperative with him. He stayed on scene. EMS
5 responds --

6 MS. BURKE: Objection, Your Honor.

7 THE COURT: Overruled.

8 MR. MOTTOLA: He stays on scene briefly until
9 EMS responds, then he goes up the very next block which
10 is where he is hiding behind that van, okay.

11 Again, his actions here speak louder than
12 anything else.

13 (Whereupon, a videotape was played.)

14 MR. MOTTOLA: He wants to tell you right now
15 the officers telling him get down, as this video runs.

16 Yeah, please.

17 That the, his testimony, the defendant's
18 testimony is that the police have already ordered him
19 to the ground.

20 (Whereupon, there was a pause in the
21 proceedings.)

22 MR. MOTTOLA: Yeah. Just look. He is up
23 here at the top, he is crouching down, he is on his
24 feet. He is bending his shoulders down, okay.

25 The video's running. The video's running, he

1 is still there. Then you are going to see the feet of
2 officers come up right over this side of the van
3 (indicating). He is on the ground. Here come the
4 officers. He is still down.

5 Now you see Louard. Look what the defendant
6 does. He tries to get back up. He tries to get back
7 up.

8 Officer, could you please put the lights on?

9 So Officer Louard tells you he didn't make
10 contact. He didn't see the defendant when he is behind
11 the van, okay.

12 What's Officer Louard's motive to lie when he
13 tells you that? Ask that to yourselves when you are
14 going through his testimony. He came in here, said I
15 got called. I didn't know the guy that was stabbed. I
16 don't know the defendant, okay. I am just doing my job
17 canvassing and I show up, I see this guy. The call's
18 for a stabbing. My gun is out. I am looking. I don't
19 see him. Good samaritan points behind the van. He
20 peeks around the van. Lo and behold we have our
21 defendant on the ground.

22 He wants to tell you no, I wasn't trying to
23 run. I wasn't trying to hide. My knee hurts. I have
24 a bad knee. Remember he told us that. He has an
25 excuse for everything he did that day.

1 He didn't have an excuse for one thing, the
2 knife. Where's the knife? Where's the knife? He
3 tells you it's a wire cutter originally or a wire
4 stripper. Eventually he started calling it a knife on
5 the witness stand. Where is it?

6 I asked him that. He said I don't have it.
7 Why don't you have it? I didn't want it. Yeah. He
8 didn't want it because he stabbed a man with it five
9 times. He is getting rid of the evidence. Why would
10 he want it? If it was really this wire stripper,
11 right, that he wants you to believe, wouldn't he have
12 kept it?

13 You have eyes. Use your own eyes, everyone.
14 You can look at that as long as you want. That's not a
15 wire stripper, that is a knife. Clear as day that's a
16 knife.

17 MS. BURKE: Objection.

18 MR. MOTTOLA: Where is it?

19 THE COURT: Sustained.

20 MR. MOTTOLA: We don't have it.

21 And he told you that he dropped it on Court
22 Street. But remember I asked him about the grand jury.
23 In the grand jury he told those people, right, he told
24 those jurors no, no. I, I put it -- I dropped it on
25 Boerum.

1 Okay. Which is important. Because you saw
2 that map. Boerum is actually the end of his flight
3 here. So he tells the grand jury I put it, I dropped
4 it on Boerum Place. Doesn't tell us why. But he says
5 he dropped it on Boerum.

6 I submit to you that's the truth, because
7 Janelle Toribio told you when they exit the
8 construction site that's right there, sees the
9 defendant with the bloody knife, puts it his pocket, he
10 runs away. Somewhere along that crazy path he took, I
11 submit that he came up with the idea I don't want this
12 knife because people are following me. He threw the
13 knife somewhere on Boerum. That's why we don't have
14 it.

15 But he told you, he got up there, told you he
16 wanted to make it look like who cares about the knife,
17 not important. You know, I was under fear. I was
18 under stress. I have just dropped it somewhere on
19 Court.

20 Nonsense. He knows what he said in the grand
21 jury. He won't even stick to that, tell you he dropped
22 it on Boerum. Why? He will say anything to you.

23 I submit that's exactly what happened when he
24 told you about this brick. No one else saw the brick
25 whirling over the head like a sling, okay. None of

1 that happened. Only one person told you that it
2 happened. And he is the interested witness that's
3 sitting there (indicating). That's the only person.

4 You are going to get the law in a couple of
5 minutes. There are two charges. Attempted assault in
6 the first degree, and assault in the second degree.

7 We are going to start at the bottom. That's
8 the assault in the second degree.

9 The defendant caused physical injury to
10 Mohammed Khalifa with a dangerous instrument.

11 Well when you stab someone five times,
12 bleeding profusely, go to the hospital, you cause them
13 physical injury. How did he do it? I think we agree
14 he did it with that knife. That one's easy. That
15 one's guilty.

16 Attempted assault in the first degree. I
17 don't have to prove to you. You see Miss Burke
18 mentioned a lot about serious physical injury. I don't
19 have to prove that he suffered a serious physical
20 injury. In fact, I am telling you he did not suffer
21 one under the law. All I have to prove to you is that
22 the defendant was attempting to cause serious physical
23 injury to Mohammed Khalifa. When you stab someone five
24 times, including in the head, all right.

25 You saw the EMT report. I am reading from

1 the medical records here from the consultation notes.

2 Stab wounds to lateral left chest and left
3 flank, stab wounds to the right cheek, stab wound above
4 right eyebrow, stab wound to the left forearm.

5 When you stab someone five times, twice to
6 the front and the back, twice to the forearm, twice to
7 the head, what else could you be doing? You are trying
8 to seriously hurt them.

9 Just because I submit Mr. Khalifa got lucky
10 and the defendant got lucky he didn't actually cause a
11 serious physical injury, doesn't mean that wasn't his
12 intent. His actions proved to you that's exactly what
13 it was.

14 So, the big thing here, right? Is
15 justification. Well let's say you are sitting there,
16 you are saying, Mr. Mottola, I don't know. I don't
17 know. I don't know. What if, what if we can't see it?
18 The witnesses just missed this, this brick. Something
19 was in that shirt, that hoodie and I don't know. I
20 don't know. Maybe, you know, maybe he was within his
21 right to stab him. Stab him once, stab him twice.

22 Go back to Ashley's testimony. She's right
23 there. Once even if you believe that Mr. Khalifa had
24 any kind of object or the defendant thought he had this
25 object, once he is stabbed twice, breaks away and is

1 running and fleeing towards that construction site,
2 okay, the fight is over. The fight is over. He now
3 can no longer use that knife. He can retreat in
4 complete safety for himself. The man is done. He is
5 stabbed and fleeing.

6 He didn't do that. Because that's not what
7 this defendant does. He was going to teach Mr. Khalifa
8 a lesson for those nasty things he said to him. He
9 followed him and he chased him down. He went to finish
10 the job. He stabs him three more times. And the law
11 doesn't permit that. That's not self-defense.

12 We spoke in voir dire a lot about how you
13 weren't going to hear from Mr. Khalifa. And I asked
14 all these people that came in here, this courtroom is
15 full, 60, 70 jurors. You are the well, or the 14 that
16 were selected to sit because you said you know what, if
17 I meet my burden and I prove my case beyond a
18 reasonable doubt, despite not hearing from Mr. Khalifa
19 you could return a verdict of guilty.

20 You don't have to like him. I am not asking
21 you to like him. No one has to like him. He said
22 mean, horrible things to this defendant. But he never
23 had a weapon.

24 We know his behavior was erratic. Maybe he
25 had some kind of emotional thing going on. We don't

1 know. No one knows. He is not here. His voice still
2 counts. He is still a human being. He is still
3 protected by the law that protects you, that protects
4 the Judge, that protects me and Mr. McGriff.

5 Just because he is not here doesn't mean he
6 doesn't get a voice in this case. You are his voice.
7 You can return the verdict that is consistent with the
8 evidence. He did not deserve what happened to him in
9 this photo here. Under no view of the evidence was he
10 armed, and he did not deserve that knife being plunged
11 into his body five times, no matter what he said.

12 This defendant is in that chair. He is on
13 trial because of the choices he made that day. The
14 choices of escalating a situation where he could have
15 punched a man, to the situation where he pulled out a
16 knife. He stabbed him again and again and again. It
17 was not self-defense. It was assault.

18 Thank you.

19 THE COURT: Thank you.

20 All right, ladies and gentlemen, I am going
21 to send you out to an early lunch. I will ask you to
22 be back promptly 2:15. At that point I will charge you
23 on the law, you will begin your deliberations in this
24 matter.

25 In the interim, please don't discuss the case

1 among yourselves or with anyone else. Don't go online
2 and do any independent research of any kind as we have
3 discussed multiple times.

4 I will see you this afternoon. Thank you
5 very much for your attention. I will see you a little
6 later. Thank you.

7 (Whereupon, the jury left the courtroom.)

8 THE COURT: Okay. 2:15, everyone. Thank you
9 very much.

10 Counsels, approach.

11 (Whereupon, there was a discussion held at
12 the bench off the record.)

13 (Whereupon, luncheon recess is taken, after
14 which the proceedings continued as follows:)

15 * * * * *

16 **A F T E R N O O N S E S S I O N**

17 * * * * *

18 THE CLERK: Recalling the case on trial of
19 Lorenzo McGriff. The parties are present. Outside the
20 presence of the jury.

21 THE COURT: All right. All appearances are
22 as previously noted.

23 Before we call the jury in for the charge I
24 want to make a record about something that occurred
25 here in the courtroom this morning.

1 You can have a seat. Thank you.

2 At the, during the defense summation
3 Miss Burke was holding in her hand an item that
4 appeared to be a sweater, and at one point dropped it
5 to the ground and there was a thudding noise, I would
6 say, that came from that.

7 That was, by the way, for better or worse,
8 without objection by the People as to either.

9 During the People's summation we, I would
10 note that from my vantage point the projector was up
11 and so I could not see the defense table well, until
12 just about a minute or so before Mr. Mottola finished
13 his comments, his summations.

14 I noticed that the item that appeared to be
15 the same sweater that Miss Burke had been holding
16 during summation was now on the defense table, and the
17 ends of it were opened and there was an item in the,
18 sitting inside of it that appeared, from my vantage
19 point, to be a brick. We sent the jury out and were
20 due back here for lunch.

21 I did call the attorneys, I believe
22 Miss D'Agostino might have stepped out already, but I
23 called -- actually don't remember, I'm sorry, if you
24 had --

25 MS. D'AGOSTINO: I did.

1 THE COURT: I am sorry.

2 MS. D'AGOSTINO: That's okay.

3 THE COURT: That the attorneys had all come
4 up and I said to Mr. Wittwer that I wanted that item
5 out of the courtroom. And he told me that he was
6 placing it back in his briefcase or his bag. And I
7 said that I did not want it in the courtroom at all.

8 Mr. Wittwer's response to me off the record,
9 I will allow you to correct it if I am wrong, was that
10 it was demonstrative evidence. And I said it most
11 certainly is not, and I did not want it here.

12 Again, that was as well, for better or worse,
13 without objection by the People to it's continued
14 presence on the defense table during the People's
15 summation.

16 So, leaving aside it's impact on the trial,
17 which of course since it was sitting there without
18 objection it is already done, but I'll just let you
19 know upfront that should there be any note from the
20 jury referencing those items in any way, I am prepared
21 to tell them that those items are not evidence and they
22 are to be completely disregarded.

23 Second of all, and we may have occasion to
24 discuss this after the trial is over, I am very, very
25 concerned about the safety implications of bringing an

1 item of that into the courtroom without the knowledge
2 of the sergeant or the officers. Certainly without
3 consulting the Court to let me know that was your
4 intention to do. Had I been told of it I certainly
5 would have said no.

6 It was completely inappropriate to have an
7 item such as that on display at all, but certainly
8 brought into the court without alerting anyone that
9 this was taking place. And as I said, I don't know
10 what if anything will, I will do after the trial is
11 over. Has nothing to do with it here.

12 But I will tell you now I do intend to speak
13 to the administrative Judge about it and see whether
14 there is, to discuss the safety implications that it
15 presents for all of us.

16 So, anything?

17 MR. WITTWER: Just I apologize, Your Honor.
18 The intent was not for it to be surreptitious. It has
19 been removed and will not be brought into the
20 courtroom.

21 I spoke to my supervisor when I was out of
22 the courtroom. I understand it was unsafe to bring it
23 in and I apologize.

24 THE COURT: Okay. You can line up the jury.
25 Thank you.

1 (Whereupon, there was a pause in the
2 proceedings.)

3 COURT OFFICER: Ready for the jury, Your
4 Honor?

5 THE COURT: Yes. Thank you.

6 COURT OFFICER: Jury entering.

7 (Whereupon, the jury entered the courtroom.)

8 COURT OFFICER: Step in, please.

9 THE CLERK: Jury is present and properly
10 seated.

11 Does each side waive the jury roll call?

12 MR. MOTTOLA: So waived.

13 MS. BURKE: So waived.

14 THE CLERK: Thank you.

15 THE COURT: Thank you.

16 Good afternoon, everyone.

17 THE JURY: Good afternoon.

18 THE COURT: Can't tell if any of you went
19 outside 'cause you look like you are not iced over. I
20 will assume some of you stayed put and stayed warm.
21 Okay.

22 So, ladies and gentlemen of the jury, we've
23 now reached that point in the trial when I am going to
24 instruct you on the law and you will begin your
25 deliberations. I am going to divide my instructions

1 into three parts.

2 First, I'll give you the general principles
3 of law that apply to this and all criminal trials.
4 Second, I'll instruct you on the law as it applies to
5 the particular crimes that you're going to consider,
6 and there are two. And third, I'll explain to you the
7 process of your deliberations.

8 So you and I are sitting here together as
9 judges. As I've said before, you are the judges of the
10 facts, I'm the judge of the law. Because I'm the judge
11 of the law, you must apply to the facts as you find
12 them, the principles of law that I give to you. You
13 must accept the principles of law as I define them,
14 whether you agree with them or not.

15 However, you are the sole judges of the
16 facts. You're not to consider anything that I say to
17 you now or anything I said during the trial, any
18 questions I might have asked, or any rulings that I
19 made, or even the manner in which I made any of my
20 rulings as indicating to you that I have an opinion
21 about this case one way or the other. I have no such
22 opinion.

23 In my instructions to you now, I'm not going
24 to review or summarize the evidence. But I will refer
25 to particular parts of the evidence if I think that

1 it's necessary to explain a point of law relating to
2 that evidence.

3 Do not draw any conclusion from the fact that
4 I refer to some parts of the evidence and not others
5 that I have an opinion about the importance of any
6 particular piece of evidence. You are the judges of
7 the evidence, not me.

8 Nor should you consider the fact that I give
9 you any particular instructions, nor the order in which
10 I give them to you, as intending to communicate to you
11 any opinion about how the issues before you should be
12 resolved or even of their relative importance.

13 During the trial objections were made by the
14 parties which sometimes I sustained, sometimes I
15 overruled. Requests were made which sometimes I
16 granted and sometimes I denied. These were all matters
17 of law within my province.

18 You're not to draw any inferences or
19 conclusions for or against a witness, the People or the
20 defendant from these rulings. It's totally up to you
21 to decide what the facts are, whether one fact is more
22 important than another fact, whether a witness was
23 truthful or not truthful, or whether a witness was
24 accurate or not accurate. These are all matters within
25 your exclusive power as the judges of the facts.

1 The level of my voice or my intonation may
2 vary during those instructions. If I do that, it's
3 done to help you understand the instructions. It's not
4 done to communicate any opinion about the law or the
5 facts of the case, or whether the defendant is guilty
6 or not guilty.

7 Remember, nothing that the attorneys said
8 during the process of jury selection, in their
9 openings, or in the making of objections or
10 applications or in their summations, none of it is
11 evidence in this case. Your own recollection,
12 understanding and evaluation of the facts presented by
13 the evidence at this trial is what controls, regardless
14 of what the attorneys may have said about the facts.
15 You and you alone are the sole and exclusive judges of
16 the facts in this case.

17 As I've already told you, you're not required
18 to accept the arguments that either party made during
19 summations. You may consider the summary and analysis
20 of the evidence that each side has offered to you. And
21 accept or reject the arguments that each one has made,
22 depending upon whether these arguments are reasonable,
23 logical and consistent with the evidence. And of
24 course it's ultimately your own obligation to review
25 carefully and analyze the evidence for yourselves and

1 draw your own conclusions from the evidence that you
2 believe to be truthful.

3 As judges of the facts, it's your sworn duty
4 to decide the case based on the evidence admitted
5 during the trial and to determine all the evidence
6 fairly and impartially. You must not indulge in
7 speculation or guesswork, and you are not to consider
8 anything outside of the evidence. You must decide this
9 case based solely on the evidence that's before you.

10 In determining whether the defendant is
11 guilty or not guilty, you must not consider or
12 speculate about any matters relating to a possible
13 sentence or punishment. If there is a verdict of
14 guilty, the Court and the Court alone determines the
15 sentence.

16 In reaching your verdict you're not to be
17 effected by sympathy for any of the parties, by what
18 the reaction of the parties or the public may be to
19 your verdict, or indeed any consideration outside the
20 case as it's been presented to you in this courtroom.
21 You should consider only the evidence, both the
22 testimony and the exhibits, find the facts from what
23 you consider to be the believable evidence, and apply
24 the law as I give it to you now. Your verdict will be
25 determined by the conclusion that you reach, no matter

1 whom the verdict helps or hurts.

2 Now, in evaluating the evidence and the
3 issues presented, you should use your common sense,
4 your knowledge and experience just as you would in
5 making decisions in your everyday life.

6 When I speak of knowledge and experience in
7 this context, I mean the sort of knowledge and
8 experience that an average person would acquire during
9 the course of their life. But some of you may have
10 something more than ordinary knowledge or experience in
11 a certain area. Indeed it may be that you have
12 developed a special expertise in a certain area, well
13 beyond what an average person would have.

14 If you have such a special expertise and if
15 it relates to some material issue in this case, it
16 would be wrong for you to rely on this special
17 expertise to inject into your deliberations either a
18 fact that's not in evidence, or inferable from the
19 evidence, or an opinion that couldn't be drawn from the
20 evidence by a person who didn't have that kind of
21 special expertise.

22 The reason it would be wrong to do so is that
23 you must decide this case only on the evidence that was
24 presented to you in this courtroom.

25 So with respect to any material issue in the

1 case, you must not use any special expertise you have
2 to insert into the deliberations evidence that hasn't
3 been presented in this courtroom during the trial.

4 So when you judge the facts, you are to
5 consider only the evidence. The evidence in this case
6 includes testimony of the witnesses, exhibits that were
7 received in evidence, and stipulations by the parties.

8 A stipulation is information that the parties
9 agreed to present to you, the jury, as evidence without
10 calling a witness to testify.

11 Testimony which was stricken from the record
12 or to which an objection was sustained must be
13 disregarded by you.

14 Exhibits that were received in evidence are
15 available at your request for your inspection and
16 consideration. Exhibits that were just seen during the
17 trial or marked for identification but not received in
18 evidence are not evidence, and thus they are not
19 available for your inspection and consideration. But
20 testimony based on exhibits that weren't received in
21 evidence may be considered by you. It's just that the
22 item itself, the exhibit itself is not available for
23 your inspection and consideration.

24 You're not to draw any inferences, either
25 favorable or unfavorable, to the People or the

1 defendant from the fact that a question was asked in
2 the first place.

3 Questions alone are not evidence. You're not
4 to conclude from just a question alone that anything
5 assumed in the question is true. No matter how
6 detailed or specific the question was. You must
7 consider the question along with the witness's answer
8 and decide whether the answer is credible and reliable.

9 In deciding whether the People have met their
10 burden of proof in this case, you should consider all
11 the evidence or the lack of evidence in deciding
12 whether the defendant is guilty or not guilty. There
13 is no legal requirement that the People present
14 evidence of any specific investigative techniques to
15 prove their case. Your concern, as I said, is to
16 determine whether or not the evidence admitted at this
17 trial proves the defendant's guilt beyond a reasonable
18 doubt.

19 As judges of the facts, you alone determine
20 the truthfulness and the accuracy of the testimony of
21 each witness that you heard. You must decide whether a
22 witness told the truth and was accurate, or instead
23 testified falsely or was mistaken. You must also
24 decide what importance to give to the testimony that
25 you do see as truthful and accurate. It's the quality

1 of the testimony that controls, not the number of
2 witnesses who testified.

3 If you find that any witness has
4 intentionally testified falsely as to any material
5 fact, you may disregard that witness's entire
6 testimony. Or you may disregard so much of it as you
7 find was untruthful and accept so much of it as you
8 find to have been truthfully and accurately given.

9 Now, there's no particular formula for
10 evaluating the truthfulness and accuracy of another
11 person's statements or testimony. You bring to this
12 process all of your varied experiences. In life all of
13 you frequently decide the truthfulness and accuracy of
14 statements that are made to you by other people.

15 The same factors you use to make those
16 decisions you should use in this case when evaluating
17 the testimony. Some of the factors that you may wish
18 to consider in evaluating the testimony of a witness
19 might include, did the witness have an opportunity to
20 see or hear the events about which he or she testified?
21 Did the witness have the ability to recall those events
22 accurately? Was the testimony of the witness plausible
23 and likely to be true, or was it implausible and not
24 likely to be true? Was the testimony of the witness
25 consistent or inconsistent with other testimony or

1 evidence in this case? Did the manner in which the
2 witness testified reflect upon the truthfulness of that
3 witness's testimony? To what extent, if any, did the
4 witness's background, training, education or experience
5 affect the believability of the witness's testimony?
6 Did the witness have a bias, hostility or some other
7 attitude that affected the truthfulness of the
8 witness's testimony?

9 You may consider whether a witness had or did
10 not have a motive to lie. If a witness had a motive to
11 lie, you may consider whether and to what extent, if
12 any, that motive affected the truthfulness of that
13 witness's testimony.

14 If a witness did not have a motive to lie,
15 you may consider that as well in evaluating the
16 witness's truthfulness. You may consider whether a
17 witness hopes for or expects to receive a benefit for
18 testifying. If so, you may consider whether and to
19 what extent it affected the truthfulness of the
20 witness's testimony.

21 You may consider whether a witness has any
22 interest in the outcome of the case. Or instead
23 whether the witness has no such interest.

24 A defendant who testifies is a person who has
25 an interest in the outcome of the case.

1 You're not required to reject the testimony
2 of an interested witness. You're not required to
3 accept the testimony of a witness who has no interest
4 in the outcome of the case. You may, however, consider
5 whether an interest in the outcome or the lack of such
6 an interest affected the truthfulness of the witness's
7 testimony.

8 You may consider whether a witness has been
9 convicted of a crime or has engaged in criminal
10 conduct; and if so, whether and to what extent it
11 affects the truthfulness of the witness's testimony.

12 You're not required to reject the testimony
13 of a witness who has been convicted of a crime or has
14 engaged in criminal conduct. You're not required to
15 accept the testimony of a witness who has not. You
16 may, however, consider whether a witness's criminal
17 conviction or conduct has affected the truthfulness of
18 the witness's testimony.

19 With respect to the defendant, a prior
20 conviction or criminal conduct are not evidence of
21 guilt in this case. They are not evidence that the
22 defendant is a person who is disposed to commit crimes.
23 You're only permitted to consider a conviction or
24 conduct to evaluate the defendant's truthfulness. Only
25 for that purpose.

1 You may consider whether a witness made
2 statements at this trial that are inconsistent with
3 each other. You may also consider whether a witness
4 made previous statements that are inconsistent with his
5 or her testimony at trial. You may consider whether a
6 witness testified to a fact here at trial that the
7 witness omitted to state at a prior time when it would
8 have been reasonable and logical for the witness to
9 have stated that fact.

10 In determining whether it would have been
11 reasonable and logical for the witness to have stated
12 the omitted fact, you may consider whether the
13 witness's attention was called to the matter and
14 whether the witness was specifically asked about it.

15 If a witness has made such inconsistent
16 statements or omissions, you may consider whether and
17 to what extent they affect the truthfulness or accuracy
18 of the witness's testimony here at this trial.

19 The contents of a prior inconsistent
20 statement, if any, are not proof of what happened. You
21 may use evidence of a prior inconsistent statement, if
22 there is such evidence, only to evaluate the
23 truthfulness or accuracy of the witness's testimony
24 here at the trial.

25 You may consider whether a witness's

1 testimony is consistent with the testimony of other
2 witnesses or with other evidence in the case.

3 If there were inconsistencies by or among
4 witnesses, you may consider whether they were
5 significant inconsistencies that relate to important
6 facts, or instead they were the kind of minor
7 inconsistencies that one might expect from multiple
8 witnesses to the same event.

9 In this case you've heard the testimony of a
10 police officer. The testimony of a witness should not
11 be believed solely and simply because the witness is a
12 police officer. At the same time, a witness's
13 testimony should not be disbelieved solely and simply
14 because the witness is a police officer.

15 In other words, you must not believe or
16 disbelieve a police officer just because he or she is a
17 police officer. You must evaluate a police officer's
18 testimony in the same way that you would evaluate the
19 testimony of any other witness.

20 You've heard testimony about the prosecutor
21 speaking to a witness about the case before the witness
22 testified at trial. The law does not prohibit a
23 prosecutor from speaking to a witness about the case
24 before the witness testifies, nor does it prohibit the
25 prosecutor from reviewing with the witness the

1 questions that will be asked at trial.

2 You've also heard the testimony that a
3 witness read certain materials pertaining to this case
4 before testifying at trial or before answering certain
5 questions. The law does not prohibit a witness from
6 doing so.

7 One of the issues in this case is whether the
8 defendant's use of physical force was justified. On
9 this issue, you have heard the testimony of the
10 defendant. The defendant contends that another person,
11 Mohammed Khalifa, has knowledge relevant to that issue.

12 The People did not call Mohammed Khalifa as a
13 witness. The fact that Mohammed Khalifa was not called
14 as a witness permits, but does not require, an
15 inference that had he been called, his testimony would
16 not have supported the People's position on this issue.

17 Let's talk for a few minutes about
18 evidentiary inferences.

19 In evaluating the evidence, you may consider
20 any fact that is proven and any inference which may be
21 drawn naturally, reasonably and logically from such
22 fact. To draw an inference means to infer, to find or
23 to conclude that a fact exists or does not exist based
24 upon proof of some other fact or facts.

25 So for example, you go to bed one night when

1 it's not raining. When you wake up in the morning you
2 look out the window and you don't see rain but you see
3 that the street and the sidewalk are wet, that people
4 are wearing raincoats and they're carrying umbrellas.

5 Under those circumstances it may be
6 reasonable for you to infer or conclude that it had
7 rained during the night.

8 In other words, the fact of rain during the
9 night is an inference that might be drawn from the
10 proven facts of the presence of water on the street,
11 presence of water on the sidewalk, the people in
12 raincoats and the people carrying umbrellas.

13 An inference must only be drawn from a proven
14 fact or facts, and then only if the inference flows
15 naturally, reasonably and logically from the proven
16 fact or facts, not if it's speculative.

17 Therefore, in deciding whether to draw an
18 inference, you must look at and consider all of the
19 facts in the light of reason, common sense and
20 experience.

21 We now turn to the fundamental principles of
22 law that apply in all criminal trials. The presumption
23 of innocence, the burden of proof, and the requirement
24 of proof beyond a reasonable doubt.

25 Throughout these proceedings the defendant is

1 presumed innocent. As a result, you must find the
2 defendant not guilty, unless on the evidence presented
3 at this trial you conclude that the People have proven
4 the defendant guilty beyond a reasonable doubt.

5 In determining whether the People have
6 satisfied their burden of proving the defendant's guilt
7 beyond a reasonable doubt, you may consider all the
8 evidence presented, whether by the People or by the
9 defendant. In doing so, however, remember that even
10 though the defendant introduced evidence, the burden of
11 proof remains on the People.

12 The defendant is not required to prove that
13 he is not guilty. In fact, he is not required to prove
14 or disprove anything at all. To the contrary, the
15 People have the burden of proving the defendant guilty
16 beyond a reasonable doubt.

17 That means before you can find the defendant
18 guilty of a crime, the People must prove beyond a
19 reasonable doubt every element of the crime, including
20 that the defendant is the person who committed the
21 crime.

22 The burden of proof never shifts from the
23 People to the defendant. If the People fail to satisfy
24 their burden of proof, you must find the defendant not
25 guilty. If the People satisfied their burden of proof,

1 you must find the defendant guilty.

2 So what does the law mean when it requires
3 proof of guilt beyond a reasonable doubt?

4 The law uses that term proof beyond a
5 reasonable doubt to tell you how convincing the
6 evidence of guilt must be to permit a verdict of
7 guilty.

8 The law recognizes that in dealing with human
9 affairs there are very few things in this world that we
10 know with absolute certainty. Therefore, the law does
11 not require the People to prove a defendant guilty
12 beyond all possible doubt.

13 On the other hand, it is not sufficient to
14 prove that the defendant is probably guilty. In a
15 criminal case the proof of guilt must be stronger than
16 that. It must be beyond a reasonable doubt.

17 So, a reasonable doubt is an honest doubt of
18 the defendant's guilt for which a reason exists based
19 upon the nature and quality of the evidence. It is an
20 actual doubt, not an imaginary one. It is a doubt that
21 a reasonable person acting in a matter of this
22 importance would be likely to entertain because of the
23 evidence that was presented or because of the lack of
24 convincing evidence.

25 Proof of guilt beyond a reasonable doubt is

1 proof that leaves you so firmly convinced of the
2 defendant's guilt that you have no reasonable doubt of
3 the existence of any element of the crime or of the
4 defendant's identity as the person who committed the
5 crime.

6 In determining whether or not the People have
7 proven the defendant's guilt beyond a reasonable doubt,
8 you should be guided solely by a full and fair
9 evaluation of the evidence. After carefully evaluating
10 the evidence, each of you must decide whether or not
11 that evidence convinces you beyond a reasonable doubt
12 of the defendant's guilt.

13 Whatever your verdict may be, it must not
14 rest on baseless speculation. Nor may it be influenced
15 in any way by bias, prejudice, sympathy, or by a desire
16 to bring an end to your deliberations or a desire to
17 avoid an unpleasant duty.

18 If you are not convinced beyond a reasonable
19 doubt that the defendant is guilty of a charged crime,
20 you must find him not guilty of that crime. If you are
21 convinced beyond a reasonable doubt that the defendant
22 is guilty of a charged crime, you must find him guilty
23 of that crime.

24 We've now come to the second part of the
25 charge in which I am going to submit to you the two

1 crimes that you're going to consider. In submitting
2 these crimes to you I am going to read to you the
3 definition of the crimes, then I will explain some
4 terms used in the definition. And then I will list for
5 you the elements which you must find to have been
6 proven beyond a reasonable doubt in order to convict
7 the defendant of each crime.

8 Let me emphasize that an indictment is simply
9 an accusation required by the law solely for the
10 purpose of informing a defendant of the offenses with
11 which he is charged. It is simply a paper writing.
12 The allegations set forth in the indictment are not
13 evidence. And as I say, the indictment is merely the
14 device required by law to inform a defendant of the
15 charges against him and to bring those charges to
16 trial.

17 So, with respect to counts one and two, the
18 defendant has raised the defense of justification, also
19 known as self-defense.

20 Actually I am going to take a minute.
21 Everybody with me? Let's take some, couple of deep
22 breaths, make sure we are all together and we're all
23 focused. There used to be a Judge here years ago used
24 to make the jurors stand up, do calisthenics. I am too
25 old. I am not going to make you do that. Take some

1 deep breaths. Make sure you are all still with me.

2 (Whereupon, there was laughter in the
3 courtroom.)

4 THE COURT: So I started, as I started to
5 say, with respect to counts one and two, both counts
6 that you are going to consider the defendant has raised
7 the defense of justification, also known as
8 self-defense.

9 The defendant, however, is not required to
10 prove that he was justified. The People are required
11 to prove beyond a reasonable doubt that he was not
12 justified.

13 So let me explain our law's definition on the
14 defense of justification as it applies here.

15 Under our law, a person may use physical
16 force upon another individual when and to the extent
17 that he reasonably believes it to be necessary to
18 defend himself from what he reasonably believes to be
19 the use or imminent use of physical force by such
20 person.

21 The determination of whether a person
22 reasonably believes physical force to be necessary to
23 defend himself from what he reasonably believes to be
24 the use or imminent use of physical force by another
25 requires you to apply a two part test. The test

1 applies to this case in the following way.

2 First, the defendant must have actually
3 believed that Mohammed Khalifa was using or was about
4 to use physical force against him, and that the
5 defendant's own use of physical force was necessary to
6 defend himself from it.

7 And second, a reasonable person in the
8 defendant's position, knowing what the defendant knew
9 and being in the same circumstances, would have had
10 those same beliefs. It does not matter that the
11 defendant was or may have been mistaken in his belief,
12 provided that such belief was both honestly held and
13 reasonable.

14 Notwithstanding the rules that I have just
15 explained, the defendant would not be justified in
16 using physical force under the following circumstances.

17 First, the defendant would not be justified
18 if he was the initial aggressor. Except that the
19 defendant's use of physical force would nevertheless be
20 justified if he had withdrawn from the encounter and
21 effectively communicated that withdrawal to Mohammed
22 Khalifa, but Mohammed Khalifa persisted in continuing
23 the incident by the use or threatened use of imminent
24 physical force. The imminent use of physical force.

25 Arguing, using abusive language, calling a

1 person names, or the like, unaccompanied by physical
2 threats or acts does not make a person an initial
3 aggressor and does not justify his force.

4 Initial aggressor means the person who first
5 attacks or threatens to attack. That is, the first
6 person who uses or threatens the imminent use of
7 offensive physical force. The actual striking of the
8 first blow or inflicting of the first wound, however,
9 does not necessarily determine who is the initial
10 aggressor.

11 A person who reasonably believes that another
12 is about to use physical force upon him need not wait
13 until he is struck and wounded -- struck or wounded.
14 He may in such circumstances be the first to use
15 physical force, so long as he reasonably believed it
16 was about to be used against him. He is then not
17 considered the initial aggressor, even though he
18 strikes the first blow or inflicts the first wound.

19 Second, the defendant would not be justified
20 if Mohammed Khalifa's conduct was provoked by the
21 defendant himself with intent to cause physical injury
22 to Mohammed Khalifa.

23 The People are required to prove beyond a
24 reasonable doubt that the defendant was not justified.
25 It is therefore an element of each of the two counts

1 that the defendant was not justified.

2 As a result, if you find that the People have
3 failed to prove beyond a reasonable doubt that the
4 defendant was not justified, then you must find him not
5 guilty under counts one and two.

6 So the first count that you will consider is
7 the attempt to commit the crime of assault in the first
8 degree.

9 Under our law, a person is guilty of assault
10 in the first degree when with intent to cause serious
11 physical injury to another person, he causes such
12 injury to that person by means of a dangerous
13 instrument.

14 Some of the terms used in this definition
15 have their own special meaning in the law. So, serious
16 physical injury means impairment of a person's physical
17 condition which creates a substantial risk of death or
18 which causes death, or serious and protracted
19 disfigurement, or protracted impairment of health, or
20 protracted loss or impairment of the function of any
21 bodily organ.

22 Intent means conscious objective or purpose.

23 Thus, a person acts with intent to cause
24 serious physical injury to another when that person's
25 conscious objective or purpose is to cause serious

1 physical injury to another.

2 Dangerous instrument means any instrument,
3 article or substance which under the circumstances in
4 which it is used, attempted to be used, or threatened
5 to be used is readily capable of causing death or other
6 serious physical injury.

7 Now under our law, a person is guilty of an
8 attempt to commit a crime when with the intent to
9 commit a crime, he engages in conduct which tends to
10 effect the commission of that crime.

11 Intent again means a conscious objective or
12 purpose. Thus, a person acts with intent to commit a
13 crime when his or her conscious objective or purpose is
14 to commit that crime.

15 Conduct which tends to effect the commission
16 of a crime means conduct which comes dangerously close
17 or very near to the completion of the intended crime.

18 If a person intends to commit a crime and
19 engages in conduct which carries his or her purpose
20 forward within dangerous proximity to the completion of
21 the intended crime, he or she is guilty of an attempt
22 to commit that crime. It does doesn't matter that the
23 intended crime was not actually completed. The
24 person's conduct must be directed towards the
25 accomplishment of the intended crime. It must go

1 beyond planning and mere preparation, but it need not
2 be the last act necessary to effect the actual
3 commission of the intended crime. Rather, the conduct
4 involved must go far enough that it comes dangerously
5 close or very near to completing the intended crime.

6 So, in order for you to find the defendant
7 guilty of attempted assault in the first degree, the
8 People are required to prove from all the evidence in
9 the case beyond a reasonable doubt each of the
10 following three elements.

11 First, that on or about August 11, 2015, in
12 the County of Kings, the defendant, Lorenzo McGriff,
13 intended to commit the crime of assault in the first
14 degree. And second, that the defendant engaged in
15 conduct which tended to effect the commission of that
16 crime. And third, that the defendant was not
17 justified.

18 Therefore, if you find that the People have
19 proven beyond a reasonable doubt each of those three
20 elements, you must find the defendant guilty of the
21 crime of attempted assault in the first degree under
22 the first count.

23 On the other hand, if you find that the
24 People have not proven beyond a reasonable doubt any
25 one or more of those three elements, you must find him

1 not guilty of the crime of attempted assault in the
2 first degree under count one.

3 The second count you will consider is assault
4 in the second degree.

5 Under our law, a person is guilty of assault
6 in the second degree when with intent to cause physical
7 injury to another person, he causes such injury to that
8 person by means of a dangerous instrument.

9 Physical injury means impairment of physical
10 condition or substantial pain. Intent again means
11 conscious objective or purpose.

12 So a person acts with intent to cause
13 physical injury to another when that person's conscious
14 objective or purpose is to cause physical injury to
15 another.

16 Dangerous instrument again means any
17 instrument, article or substance which under the
18 circumstances in which it is used, attempted to be
19 used, or threatened to be used, is readily capable of
20 causing death or other serious physical injury. That
21 is, serious and protracted disfigurement, protracted
22 impairment of health, protracted loss or impairment of
23 the function of any bodily organ.

24 Under this definition, death or other serious
25 physical injury need not, in fact, be caused.

1 So in order for you to find the defendant
2 guilty of this crime, the People are required to prove
3 from all the evidence in the case beyond a reasonable
4 doubt each of the following three elements.

5 First, that on or about August 11, 2015, in
6 the County of Kings, the defendant, Lorenzo McGill
7 (sic), caused physical injury to Mohammed Khalifa by
8 means of a dangerous instrument. And second, that the
9 defendant did so with the intent to cause physical
10 injury to Mohammed Khalifa. And third, that the
11 defendant was not justified.

12 Therefore, if you find that the People have
13 proven beyond a reasonable doubt each of those three
14 elements, you must find him guilty of the crime of
15 assault in the second degree as charged in the second
16 count.

17 On the other hand, if you find that the
18 People have not proven beyond a reasonable doubt any of
19 those three elements, you must find the defendant not
20 guilty of assault in the second degree as charged in
21 the second count.

22 We've now reached the third and final part of
23 the charge that deals with the process of your
24 deliberations.

25 Your verdict, whether guilty or not guilty,

1 must be unanimous. Meaning each and every juror must
2 agree to it. Now no one expects that all jurors will
3 have the same view of the case when they first enter
4 the jury room.

5 To reach a unanimous verdict you must
6 deliberate with the other jurors. That means you
7 should discuss the evidence and consult with each
8 other, listen to each other, give each other's views
9 careful consideration and reason together when
10 considering the evidence. And when you deliberate, you
11 should do so with an eye toward reaching an agreement,
12 if that can be done without you surrendering your
13 individual judgment.

14 Each of you must decide the case for
15 yourself, but only after a fair and impartial
16 consideration of the evidence with the other jurors.
17 You should not surrender an honest view of the evidence
18 simply because you want the trial to end or because you
19 are outvoted.

20 At the same time you should not hesitate to
21 re-examine your views and change your mind if you
22 become convinced that your position was not correct.

23 In other words, ladies and gentlemen, when
24 you enter the jury room in a few minutes you may have
25 individually reached certain tentative opinions and

1 conclusions. Before finalizing those opinions and
2 conclusions you should deliberate with the other
3 jurors. You should be open to reason and be willing to
4 either adhere to your opinion and conclusions if you
5 are persuaded that you are correct, or to change your
6 opinion and conclusions if you are persuaded that you
7 are not.

8 In the interest of justice, please make every
9 effort consistent with your conscience and the evidence
10 in this case to harmonize your views and decisions in
11 this case with those of your fellow jurors. And make
12 every effort to come to a unanimous agreement based on
13 the law and the facts of the case.

14 To the best of your ability I ask you to
15 apply common sense and good judgment. Do not let fear,
16 favor, sympathy, bias, prejudice or consideration of a
17 possible sentence or punishment sway your minds in any
18 way in analyzing the testimony. Decide this case, as
19 you promised, fairly on the evidence and on the law,
20 whether you agree with the law or not.

21 Now under our law the first juror selected is
22 known as the foreperson. During deliberations the
23 foreperson's opinion and vote are not entitled to any
24 more importance than that of any other juror.

25 Natalie Nikolayeva is the foreperson. What

1 we ask the foreperson to do during deliberations is to
2 sign any written note that the jury sends to the Court.
3 The foreperson does not have to write the note or agree
4 with its contents. The foreperson's signature only
5 indicates that the writing comes from the jury.

6 You'll get paper for jury notes. Please put
7 the date and time of the note. Please do not reveal
8 any information regarding your deliberations or any
9 votes that you have taken on any count in your note.

10 When the jury has reached a verdict, guilty
11 or not guilty, the entire jury will be asked to come
12 into court. The foreperson will be asked whether the
13 jury has reached a verdict. And if the foreperson says
14 yes, she will be asked what the verdict is for each
15 charged crime. After that, the entire jury will be
16 asked as a group whether that is their verdict and they
17 will answer yes or no.

18 Finally, upon the request of a party, each
19 juror will be asked individually whether the announced
20 verdict is the verdict of that juror. And then upon
21 being asked, each juror will answer yes or no.

22 Now, I'm holding a form that you are going to
23 get known as a verdict sheet (indicating). The verdict
24 sheet lists each count that's being submitted for your
25 consideration. The manner which you are to consider

1 the counts and possible verdicts. Please use the form
2 to record your verdict with an X or a checkmark in the
3 appropriate place for each count that you are required
4 to consider in accordance with my instructions.

5 You may see any or all of the exhibits which
6 were received in evidence. Simply write me a note
7 telling me which exhibit or exhibits you want to see,
8 have the foreperson sign the note, and specify the date
9 and time.

10 As I previously explained, I can only provide
11 those evidence -- those items that were received in
12 evidence. If something was just seen in the courtroom,
13 marked for identification but not moved into evidence,
14 just used to question the witness, I may not submit
15 that to you unless it was actually received in
16 evidence.

17 You may also have the testimony of any
18 witness read back in whole or in part. Again, if you
19 want a readback, write me a note telling me what
20 testimony you wish to hear. If you are interested in
21 hearing only a portion of a witness's testimony, please
22 specify in your note which witness, and with as much
23 detail as possible, which part of the testimony you
24 want to hear. If you want to hear all or a portion of
25 a witness's testimony only during a particular

1 examination, for example, direct or cross, specify that
2 too. Feel free to identify the particular examination
3 you want to hear by using the name of the lawyer who
4 conducted it.

5 The detailed description of what you want to
6 hear is necessary because we have to read each question
7 and answer in order to decide whether it's part of what
8 you asked for. That process normally takes some time,
9 so please be patient while we search the record to
10 answer your request.

11 In the alternative you may request readback
12 of the entire testimony of a witness or the entire
13 testimony of a witness during a particular examination.
14 And if you wish, you can authorize your foreperson to
15 raise her hand when the court reporter has read
16 everything you wanted to hear. I will instruct the
17 reporter to stop reading.

18 Of course when testimony is read back,
19 questions to which an objection was sustained, material
20 that was otherwise stricken from the record is not read
21 back.

22 If you would like me to re-read any part of
23 the legal instructions I have just given you, or if you
24 have any questions about the instructions, please
25 indicate that in writing. Again, signed by the

1 foreperson, with the date and time stated and give it
2 to the court officer. Please be as specific as you can
3 about what part of the instructions want read back or
4 explained.

5 Finally there are a few remaining rules which
6 you must observe during your deliberations.

7 While you are here in the courthouse
8 deliberating on the case you will be sequestered.
9 Meaning you will all be kept together in the jury room
10 under the supervision of a court officer. You may not
11 leave the jury room without permission. Other than
12 today, obviously, lunch will be provided.

13 If you have a cell phone or other electronic
14 device, please give it to the court officer to hold for
15 you while you are engaged in deliberations.

16 Second, you must deliberate about the case
17 only when all twelve of you are gathered together in
18 the jury room. For example, you must not be discussing
19 the case as you go back and forth from the courtroom to
20 the jury room. It's simply important that each juror
21 have an opportunity to hear what another juror has to
22 say about the case. And by law, that must only be done
23 when all of you are gathered together in the jury room.

24 So if for any reason all twelve deliberating
25 jurors are not together in the jury room, stop

1 deliberating until all twelve of you are back together
2 again. All right.

3 Third, during your deliberations you must
4 only discuss the case amongst yourselves. You must not
5 discuss the case with anyone else, including the court
6 officer, or permit anyone other than a fellow juror to
7 discuss the case in your presence.

8 Fourth, if you have a question or a request,
9 you must communicate with me by writing a note. The
10 law requires that you communicate with me in writing in
11 part to make sure there are no misunderstandings about
12 what you are asking for. What you want. Give the note
13 to the court officer, who in turn will give it to me.

14 When the jury room door is open to give the
15 court officer the note, please stop deliberating until
16 the officer has left and the door is closed.

17 And again, in any note that you send to me,
18 please do not tell me what the vote of the jury is on
19 any count. All right.

20 In just a few minutes the twelve jurors will
21 be brought into the jury room to start their
22 deliberations. The two alternate jurors will be
23 separated from the deliberating jury. The alternate
24 jurors are not to discuss the case with each other or
25 anyone else.

1 Counsels want to come up.

2 (Whereupon, there was a discussion held at
3 the bench off the record.)

4 THE COURT: All right, ladies and gentlemen,
5 so as I said we are going to send you back into the
6 jury room to begin your deliberations. And all twelve
7 of you, please don't discuss the case, anything about
8 the case, until all twelve of you are in the room with
9 the door closed. Enjoy each other's company, guys.
10 Don't discuss the case or anything about it, and we
11 will see you back in a while. Thank you so much.

12 (Whereupon, the jury left the courtroom.)

13 THE COURT: Okay. I had just clarified up at
14 the bench any objection to the charge.

15 MR. MOTTOLA: No, Your Honor.

16 THE COURT: From the defense.

17 MS. BURKE: No, Your Honor.

18 THE COURT: Okay. What I mentioned up at the
19 bench is I will give you an opportunity, for right now
20 we will keep the alternates here. You can discuss with
21 Mr. McGriff and Mr. Wittwer what you want to do about
22 keeping the alternates, not. Let me know, I guess, as
23 we get close to the end of the day what you want to do.

24 If I could ask for, may I get your consent if
25 we get a request for the exhibits going into the

1 deliberation room, do we have your consent to send the
2 exhibits in without calling you back to read the note,
3 etcetera?

4 MS. BURKE: Yes, Your Honor.

5 MR. MOTTOLA: The only exception would be I,
6 again the medical records. I don't think they
7 personal, like the address or whatever was redacted. I
8 can try to get a pencil now. I have no objection to
9 anything else.

10 THE COURT: Why don't you look through --

11 MS. BURKE: The medical records or the FDNY?

12 MR. MOTTOLA: His medical records --

13 THE COURT: I think you need a Magic Marker
14 instead of a pencil.

15 MR. WITTWER: I have a redaction pencil.

16 THE COURT: Oh, okay. Great.

17 In terms of the videos, why don't you come
18 up.

19 (Whereupon, there was a discussion held at
20 the bench off the record.)

21 THE COURT: Just as we discussed, I'll ask
22 counsels to look over the medical records for
23 redactions. And the laptop that goes with the videos,
24 as long as there's no internet access, no Google,
25 nothing of that nature that can be used by the

1 deliberating jurors, that's fine.

2 MR. MOTTOLA: Yes, there is no internet
3 access on this laptop.

4 THE COURT: Okay. Thank you.

5 Second call on the, third call. I have one
6 other case to do. Thank you.

7 MR. MOTTOLA: Yes. If I could just make a
8 record about the laptop, Your Honor.

9 THE COURT: Oh, sorry. Yes.

10 MR. MOTTOLA: It's okay.

11 So I checked the laptop. There is nothing on
12 it. There does appear to be, it does have access to
13 wireless internet. Right now it has no connection. I
14 don't know if they will be -- I am not a hundred
15 percent certain if they will be able to get on the
16 court network. Looks like it's connected to my
17 office's internet. It has no connection, Google,
18 nothing.

19 THE COURT: Well usually they get us a laptop
20 that doesn't have any of that.

21 MR. MOTTOLA: Okay.

22 THE COURT: Sort of cleaned off. Maybe you
23 can check with your tech people.

24 MR. MOTTOLA: Sure.

25 Your Honor, I have completely deactivated.

1 The computer's in airplane mode. I completely
2 deactivated any potential wifi issue. I showed it to
3 counsel.

4 MR. WITTWER: It's fine.

5 THE COURT: Great.

6 (Whereupon, there was a break in the
7 proceedings and then resumed shortly thereafter.)

8 (Whereupon, other business was conducted and
9 then the case continued.)

10 THE COURT: Want to line up the jury? Not
11 the alternates.

12 COURT OFFICER: Okay.

13 THE COURT: Recalling the case on trial.

14 THE CLERK: Okay. The parties are present.
15 Outside the presence of the jury.

16 THE COURT: We have two notes from the jury.
17 I have actually given copies of both notes to counsels
18 to review.

19 The first one, Court Exhibit Number 1, is
20 from 3:40 p.m., and it says, is it possible to have two
21 videos, in parenthesis, surveillance from Livingston
22 Street and the cell phone video, close parenthesis,
23 brought into the jury room on a laptop so we can view
24 the videos close up?

25 And Court Exhibit Number 2, 3:45, that says,

1 is it possible to have a written
2 description/explanation of the two charges brought to
3 the jury room? Perhaps a copy of the document the
4 Judge read from? Also, can we please see the medical
5 records.

6 So, the videos and the medical records, we
7 will just provide to them pursuant to your prior
8 consent, but I want to bring them, the jury in, tell
9 them that they can't get a written description of the
10 charges. They're not available to read even if they
11 need them.

12 Is there anything else that you would like me
13 to say in response to that question?

14 MS. BURKE: No.

15 MR. MOTTOLA: No.

16 MS. BURKE: Just inquire if they need it
17 re-read to them.

18 THE COURT: Okay. Thank you.

19 COURT OFFICER: Jury entering.

20 Step in.

21 (Whereupon, the jury entered the courtroom.)

22 THE CLERK: The deliberating jury panel is
23 present and properly seated.

24 Does each side waive the jury roll call?

25 MR. MOTTOLA: So waived.

1 MS. BURKE: So waived.

2 THE CLERK: Okay.

3 THE COURT: Good afternoon again. I have two
4 notes from you. Let me just read them.

5 Court Exhibit Number 1, 3:40 p.m. Is it
6 possible to have two videos, the surveillance from
7 Livingston Street and the cell phone video, brought in
8 the jury room on a laptop so we can view the videos
9 close up.

10 We are going to get that to you.

11 And Court Exhibit Number 2 at 3:45.

12 Is it possible to have a written
13 description/explanation of the two charges brought to
14 the jury room? Perhaps a copy of the document the
15 Judge read from.

16 No, you may not get them in writing. But we
17 are, we stand ready to read them to you or answer any
18 questions that you may have on those issues.

19 Also, can we please see the medical records.

20 We are going to get those to you, too. All
21 right. They will be coming in as soon as you come back
22 into the jury room. In the meantime, please don't
23 discuss the case amongst yourselves until all twelve of
24 you are back in the room. Thank you very much.

25 JUROR: May we ask a question?

1 JUROR: No.

2 THE COURT: No. What I need -- no, no. Well
3 as I indicated, all questions, etcetera, from the jury
4 have to be in writing, so if you have another question
5 that you would like us to answer, please write it on a
6 note, date and time signed by the foreperson, and send
7 it out to us. We are ready to answer anything we need
8 to in writing.

9 JUROR: One of the questions we submitted,
10 are we not going to hear the counts read to us again?

11 JUROR: Right.

12 THE COURT: Well I am prepared to read them
13 to all of you now --

14 JUROR: Yes.

15 THE COURT: -- if that's what you would like.

16 THE JURY: Yes. We can't have a copy of them
17 then --

18 THE COURT: In writing, right, but we will
19 read them.

20 Okay. Come up -- actually just do this.
21 Are you asking for the two substantive
22 charges?

23 JUROR: Yes.

24 THE COURT: Okay. All right. Actually come
25 on up.

1 (Whereupon, there was a discussion held at
2 the bench off the record.)

3 THE COURT: Okay. All right. The first
4 count that you are considering is attempt to commit the
5 crime of assault in the first degree. I'll instruct
6 you first on the definition of the crime of assault in
7 the first degree, then I will define attempt, and then
8 we will put them together. All right.

9 Under our law, a person is guilty of assault
10 in the first degree when with intent to cause serious
11 physical injury to another person, he causes such
12 injury to that person by means of a dangerous
13 instrument.

14 Serious physical injury means impairment of a
15 person's physical condition which creates a substantial
16 risk of death, or which causes death or serious and
17 protracted disfigurement, or protracted impairment of
18 health, or protracted loss or impairment of the
19 function of any bodily organ.

20 Intent means conscious objective or purpose.
21 Thus, a person acts with intent to cause serious
22 physical injury to another when that person's conscious
23 objective or purpose is to cause serious physical
24 injury to another.

25 Dangerous instrument means any instrument,

1 article or substance which under the circumstances in
2 which it's used, attempted to be used, or threatened to
3 be used, is readily capable of causing death or other
4 serious physical injury.

5 Under our law, a person is guilty of an
6 attempt to commit a crime when with intent to commit a
7 crime, he engages in conduct which tends to effect the
8 commission of such crime.

9 Intent again means conscious objective or
10 purpose. Thus, a person acts with intent to commit a
11 crime when his or her conscious objective or purpose is
12 to commit that crime.

13 Conduct which tends to effect the commission
14 of a crime means conduct which comes dangerously close
15 or very near to the completion of the intended crime.

16 If a person intends to commit a crime and
17 engages in conduct which carries his or her purpose
18 forward within dangerous proximity to the completion of
19 the intended crime, he or she is guilty of an attempt
20 to commit this crime. It does not matter that the
21 intended crime was not actually completed. The
22 person's conduct must be directed toward the
23 accomplishment of the intended crime. It must go
24 beyond planning and mere preparation, but it need not
25 be the last act necessary to effect the actual

1 commission of the intended crime. Rather, the conduct
2 involved must go far enough that it comes dangerously
3 close or very near to the completion of the intended
4 crime.

5 In order for you to find the defendant guilty
6 of attempted assault in the first degree, the People
7 are required to prove from all the evidence in the case
8 beyond a reasonable doubt each of the following three
9 elements.

10 First, that on or about August 11, 2015, here
11 in Brooklyn, the defendant, Lorenzo McGriff, intended
12 to commit the crime of assault in the first degree.
13 Second, that the defendant engaged in conduct which
14 tended to effect the commission of that crime. And
15 third, that the defendant was not justified.

16 Therefore, if you find that the People have
17 proven beyond a reasonable doubt each of those three
18 elements, you must find the defendant guilty of the
19 crime of attempted assault in the first degree under
20 the first count.

21 On the other hand, if you find that the
22 People have not proven beyond a reasonable doubt any
23 one or more of those elements, you must find him not
24 guilty of attempted assault in the first degree under
25 the first count.

1 The second count is assault in the second
2 degree.

3 Under our law, a person is guilty of assault
4 in the second degree when with intent to cause physical
5 injury to another person, he causes such injury to that
6 person by means of a dangerous instrument.

7 Physical injury means impairment of physical
8 condition or substantial pain. Intent means conscious
9 objective or purpose. Thus, a person acts with intent
10 to cause physical injury to another when that person's
11 conscious objective or purpose is to cause physical
12 injury to another.

13 Dangerous instrument again means any
14 instrument, article or substance which under the
15 circumstances in which it's used, attempted to be used,
16 or threatened to be used, is readily capable of causing
17 death or other serious physical injury. That is,
18 serious and protracted disfigurement, protracted
19 impairment of health, or protracted loss or impairment
20 of the function of any bodily organ.

21 Under this definition, death or other serious
22 physical injury need not, in fact, be caused.

23 In order for you to find the defendant guilty
24 of this crime, the People are required to prove from
25 all the evidence in the case beyond a reasonable doubt

1 each of the following three elements.

2 First, that on or about August 11, 2015, in
3 the County of Kings, the defendant, Lorenzo McGill,
4 caused physical injury to Mohammed Khalifa by means of
5 a dangerous instrument. Second, that the defendant did
6 so with the intent to cause physical injury to Mohammed
7 Khalifa. And third, that the defendant was not
8 justified.

9 Therefore, if you find that the People have
10 proven beyond a reasonable doubt each of those three
11 elements, you must find the defendant guilty of assault
12 in the second degree under the second count.

13 On the other hand, if you find that the
14 People have not proven beyond a reasonable doubt any of
15 those three elements, you must find him not guilty of
16 assault in the second degree as charged in the second
17 count.

18 All right. Thank you. So please don't
19 discuss the case until all twelve of you are back in
20 the room. We are going to send you a laptop, the two
21 exhibits you requested and the medical records. Thank
22 you.

23 (Whereupon, the jury left the courtroom.)

24 THE COURT: Okay. Just for the record, that
25 was the reading of the two substantive charges was

1 based upon our bench conference up at the bench.

2 MS. BURKE: Your Honor, just for the record,
3 when you initially did the jury charge you had misspoke
4 Mr. McGriff's name, you had called him Mr. McGill. I
5 thought this was just that you had been mistaken.

6 MR. MOTTOLA: Yes.

7 MS. BURKE: But in the second go around you
8 did the same thing.

9 THE COURT: I apologize. Let me see. It
10 should be a typo. Yep, it is. I apologize. Okay.

11 My apologies, sir.

12 Just for the record, what else is in the bag?

13 MR. MOTTOLA: There's nothing else. It's the
14 bag, the charger and nothing else.

15 THE COURT: Okay. If you want to step out,
16 not sitting at the table, that's fine.

17 (Whereupon, there was a break in the
18 proceedings and then resumed shortly thereafter.)

19 MS. BURKE: Your Honor, we would ask that the
20 alternates not be released but be put on phone alert so
21 they don't have to physically be in the courthouse.

22 THE COURT: Okay. We discussed that briefly
23 at the bench. And what I would do is tell the two
24 alternates to check in with us at 11 a.m. by telephone
25 here. And to leave their phones on so they can check

1 in and see if they're needed in the morning, and we
2 would call them if there's something that requires
3 their presence.

4 That's acceptable to you and your client,
5 Miss Burke?

6 MS. BURKE: Yes, Your Honor.

7 THE COURT: Mr. Mottola.

8 MR. MOTTOLA: Yes.

9 THE COURT: Okay. Let's bring in the two
10 alternates first.

11 COURT OFFICER: First?

12 THE COURT: Yes. Thank you.

13 (Whereupon, there was a pause in the
14 proceedings.)

15 COURT OFFICER: You ready, Judge?

16 THE COURT: Yes. Thank you.

17 COURT OFFICER: Alternate jurors are
18 entering.

19 Have a seat, fellas, in the first row.

20 (Whereupon, the alternate jurors entered the
21 courtroom.)

22 THE COURT: Okay. So, Mr. Nelson,
23 Mr. Flounoy, the jury is going to continue to
24 deliberate but I am going to ask the two of you to be
25 on standby on phone alert. So what that's going to

1 mean is we will ask you to call in at 11 a.m. to the
2 phone number that, we will just make sure that you have
3 the clerk's number to determine if you are needed.
4 Leave your cell phones on so we can call you in the
5 event that we need you at some other time.

6 In the meantime, you are still serving as
7 jurors. You are not to discuss the case with anyone or
8 do any independent research about anything at all
9 connected with the case. And if you are not needed and
10 the jury arrives at a verdict, etcetera, we will let
11 you know when you are discharged. You will call every
12 day at 11. We will let you know whether your presence
13 is needed.

14 Don't discuss the case between you or with
15 anybody else and we will be in touch. Thank you very
16 much.

17 JUROR: Thank you.

18 (Whereupon, the alternate jurors left the
19 courtroom.)

20 COURT OFFICER: Jury entering.

21 (Whereupon, the jury entered the courtroom.)

22 THE CLERK: Okay. The deliberating jury
23 panel is present and properly seated.

24 Does each side waive the jury roll call?

25 MR. MOTTOLA: So waived.

1 MS. BURKE: So waived.

2 THE CLERK: Thank you.

3 THE COURT: Thank you.

4 All right, everyone, a long day. A lot of
5 action today, if you will. So we are going to send you
6 on your way for the afternoon.

7 Couple of things. I am going to ask
8 everybody to be back in the jury room at 9:30 tomorrow
9 morning. As soon as all twelve of you are back
10 together in the room, you can go back to work. The
11 officer will come in and take your lunch order. That
12 will interrupt you temporarily. But again, as soon as
13 you are all in the room together you can resume your
14 deliberations. In the meantime, please don't discuss
15 the case after you leave here. Don't discuss the case
16 amongst yourselves or with anyone else. Don't do any
17 independent research or anything else about the case.

18 Go home. Clear your heads. Eat a nice
19 dinner and come back. Get some sleep. Eat your
20 Wheaties as my mother would have said, and prepared to
21 come back to work tomorrow.

22 Thank you very much for your attention and
23 see you tomorrow morning at 9:30. Thank you.

24 JUROR: Thank you.

25 (Whereupon, the jury left the courtroom.)

1 THE COURT: Okay. So as I said, Mr. McGriff,
2 we will see you 9:45.

3 Counsels, you can check in around 10:15. We
4 will call you if we get a note or something earlier
5 than that. That's it in the meantime.

6 All right. Thank you. Bail is continued.
7 Have a good night.

8 What are we doing with the laptop, by the
9 way.

10 COURT OFFICER: We are going to get it back.

11 MR. MOTTOLA: Going to give it back to me.
12 Should I wait?

13 COURT OFFICER: Yes.

14 THE COURT: This way you have it. The only
15 thing is, actually the only thing is then somebody's
16 got to drop it off at 9:30.

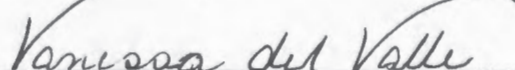
17 MR. MOTTOLA: I'll come drop it off at 9:30.

18 THE COURT: Okay. Thank you. Appreciate it.

19 * * * * *
(Whereupon, the proceedings were adjourned to
December 20, 2016.)

20 * * * * *

21 It is hereby certified that the foregoing is a true
22 and accurate transcript of the proceedings.

23 
24 VANESSA DEL VALLE
25 Senior Court Reporter

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CRIMINAL TERM : PART 33

-----x
THE PEOPLE OF THE STATE OF NEW YORK

Plaintiff,

-against-

LORENZO MCGRIFF,

Defendant.

-----x
Indict. No. 6248/15

TRIAL

320 Jay Street
Brooklyn, New York

December 20, 2016

B E F O R E :

HONORABLE MIRIAM CYRULNIK,
Justice, and a jury.

(Appearances same as previously noted.)

VANESSA DEL VALLE
Official Court Reporter

* * * *

THE CLERK: Calling number two from the Part
33 calendar, indictment 6248 of 2015, Lorenzo McGriff.
Continuation of the trial from yesterday. All the
parties are present, counsels. The defendant's out on
bail. Outside the presence of the jury panel.

MS. BURKE: Good morning, Your Honor.

THE COURT: Good morning.

All right. We received a note from the jury
marked as Court Exhibit Number 3. I believe copies

1 were given to counsels.

2 Can we please have the photo screenshot of
3 Mr. McGriff and Mr. Khalifa taken from the cell phone
4 video? That was already provided to them.

5 Also, will the Judge please explain the
6 circumstances of each charge again? Can we please be
7 permitted to take notes on said explanation?

8 So as I said, they will, they have already
9 been given the exhibit. And I will bring them in and
10 at this point re-read the two charges to them and tell
11 them that they may not take notes about it.

12 I don't know if either side has anything
13 specific beyond that that you would like me to say.

14 MR. MOTTOLA: No, Your Honor.

15 MS. BURKE: I don't know if -- I am only
16 reading into it, though. When they say explain the
17 circumstances of each charge again, I don't understand
18 what that means.

19 MR. MOTTOLA: I think what counsel's trying
20 to say, do they want justification again?

21 I think from reading the note, the use of the
22 word again, and they're saying the circumstances of
23 each charge, I think they're talking about the two
24 charges that you read the first time.

25 If they want justification, they can put that

1 in a note if you want to tell them that.

2 THE COURT: Very easy. I am not going to
3 guess about what they want. I will bring them in and
4 ask them to go back in and write us a note and ask if
5 they want each substantive charge read again. If they
6 want some other part of the charge read again, if they
7 want, ask them to clarify for us exactly what they
8 want. If that's acceptable to --

9 MS. BURKE: That's fine.

10 THE COURT: Okay. All right. Can we line up
11 the jury, please?

12 You want to come up?

13 (Whereupon, there was a discussion held at
14 the bench off the record.)

15 COURT OFFICER: You ready for the jury, Your
16 Honor?

17 THE COURT: Just a minute.

18 (Whereupon, there was a pause in the
19 proceedings.)

20 THE COURT: All right. Just for the record,
21 I'm going to read to the jury as follows.

22 We are unclear about exactly what
23 instructions you are requesting by using the word
24 circumstances. Please write us a note telling us if
25 you want the two charges read again or some other

1 portion of the Court's charge, including, but not
2 limited to justification or something else. We stand
3 ready to provide any information you need as you
4 continue deliberations.

5 Any objection to that?

6 MR. MOTTOLA: No.

7 MS. BURKE: No, Your Honor.

8 THE COURT: Okay. You can bring in the jury.

9 Thank you.

10 COURT OFFICER: Jury entering.

11 (Whereupon, the jury entered the courtroom.)

12 THE CLERK: Good morning. The deliberating
13 jury panel is present and properly seated.

14 Does each side waive the jury roll call?

15 MR. MOTTOLA: So waived.

16 MS. BURKE: So waived.

17 THE CLERK: Thank you.

18 THE COURT: Thank you.

19 Good morning.

20 JUROR: Good morning.

21 THE COURT: I have a note marked Court
22 Exhibit Number 3. Can we please have the photo
23 screenshot of Mr. McGriff and Mr. Khalifa taken from
24 the cell phone video?

25 That was provided to you I believe.

1 Also, will the Judge please explain the
2 circumstances of each charge again? Can we please be
3 permitted to take notes on said explanation?

4 All right. We are unclear about exactly what
5 instructions you're requesting by using the word
6 circumstances. So please write us a note telling us if
7 you want to hear the two charges again.

8 If you want some other portion of the Court's
9 charge, including, but not limited to justification, or
10 something else, we stand ready to provide any
11 information you need as you continue your
12 deliberations.

13 So I will send you back in the room. Please
14 don't discuss the matter again until all 12 of you are
15 back in the jury room with the door closed.

16 Again, send us a note letting us know exactly
17 what you want to hear and we will bring you back.
18 Thank you.

19 (Whereupon, the jury left the courtroom.)

20 MS. BURKE: Your Honor, I would just note
21 that you didn't address the issue of note taking, but I
22 know you had explained to them previously.
23 Apparently --

24 THE COURT: When I find out what it is that
25 they want, I will tell them they can't take notes about

1 it.

2 MR. MOTTOLA: Gotcha.

3 MS. BURKE: Okay.

4 THE COURT: Whatever it is that I end up
5 reading to them that they can't take notes about it.

6 MS. BURKE: Okay.

7 (Whereupon, there was a break in the
8 proceedings and then resumed shortly thereafter.)

9 THE COURT: Come on up.

10 (Whereupon, there was a discussion held at
11 the bench off the record.)

12 THE CLERK: Case on trial is back on the
13 record. Parties are present, outside the presence of
14 the jury.

15 THE COURT: We have received another note,
16 it's Court Exhibit Number 4, that says, please re-read
17 the entirety of the charges.

18 Period.

19 Miss Burke.

20 MS. BURKE: I would ask the Court to read not
21 the portion of the charges -- I think the Court divided
22 up three different sections. I would specifically ask
23 for section two to be read. I believe section one is
24 general instructions on, just general instructions.

25 THE COURT: Yeah. I am not reading that

1 under any circumstances.

2 MS. BURKE: I believe section three is how
3 they are to deliberate.

4 THE COURT: Right.

5 MS. BURKE: So I would believe that the
6 middle section, I would ask that the entirety of the
7 middle section be read.

8 THE COURT: Which includes?

9 MS. BURKE: Which includes the two charges,
10 the special instructions on justification, and missing
11 witness.

12 THE COURT: I am not reading missing witness.

13 MS. BURKE: Okay.

14 THE COURT: I am not reading missing witness.

15 MS. BURKE: Justification then.

16 THE COURT: It's not in that part, in any
17 event.

18 MS. BURKE: Okay. Well I would ask that the
19 two charges be read, the elements, and the
20 justification portion.

21 THE COURT: Mr. Mottola.

22 MR. MOTTOLA: Judge, I oppose that in its
23 entirety. I think it's, I think you do a disservice to
24 the jury to look at note four and not look at note
25 three they gave you. You gave them a very specific,

1 what they wanted. Note three they asked for
2 circumstances of the, each charge.

3 I think on its face they wanted the charges
4 again. The first two charges jurors were nodding when
5 you asked them that. Note four asking again for the
6 entirety of the charges, these are lay people. They're
7 not asking for the jury charge. I think that's
8 assuming a lot of them. They are asking for the two
9 charges, the main standard. They don't ask for
10 justification. If they want it, they are clearly
11 capable of writing a note and ask for it.

12 I would ask the Court to re-read what was
13 read yesterday.

14 MS. BURKE: Your Honor, then my suggestion,
15 since we are not in agreement or consenting, that we do
16 what is asked from the jury, which is re-read the
17 entire charges or ask them for more specificity.

18 THE COURT: You want an hour long jury charge
19 read to them?

20 MS. BURKE: No, I don't want it, Your Honor.
21 Really I don't. I want maybe a ten minute portion of
22 the charges read back to them. But the People aren't
23 consenting to what we want. So either we want more
24 specificity, or what the note asks for, which is the
25 entirety of the charges.

1 (Whereupon, there was a pause in the
2 proceedings.)

3 THE COURT: Come on up.

4 (Whereupon, there was a discussion held at
5 the bench off the record.)

6 THE COURT: Can you line up the jury?

7 All right. I am going to read the following
8 note to them.

9 We remain unclear about what you are asking
10 for, so please write me another note.

11 Do you want the counts of attempted assault
12 one and assault two read back with nothing more? Do
13 you want the counts of attempted assault one and
14 assault two read back with the charge of justification?
15 Or charge on justification?

16 Do you want something else other than those
17 choices? If so, please be specific about what portion
18 or portions you would like read back or explained.

19 Acceptable?

20 MS. BURKE: Acceptable to me. Yes.

21 MR. MOTTOLA: Yes.

22 THE COURT: All right.

23 COURT OFFICER: Ready for the jury?

24 THE COURT: Yes.

25 COURT OFFICER: Jury entering.

1 Step in.

2 (Whereupon, the jury entered the courtroom.)

3 THE CLERK: Okay. The jury panel is present
4 and properly seated.

5 Does each side waive the jury roll call?

6 MR. MOTTOLA: So waived.

7 MS. BURKE: So waived.

8 THE COURT: All right, ladies and gentlemen,
9 we have your next note, Court Exhibit Number 4.

10 Number 4, please re-read the entirety of the
11 charge.

12 We remain unclear about what you are asking
13 for. So I will ask you to please write us another
14 note. Do you want the counts of attempted assault one
15 and assault two read back with nothing more?

16 JUROR: Yeah.

17 THE COURT: Do you want the counts of
18 attempted one and assault two read back with the charge
19 on justification? Do you want something else other
20 than those choices? If so, please be specific about
21 what portion or portions you would like read back or
22 explained.

23 All right. Again, as I said, I know it's
24 very important for us to have you communicate with us
25 as specifically as you can in writing. So I will send

1 you back to the jury room so that you can write us a
2 note and tell us exactly what you want. We stand ready
3 to give you whatever information you need, whatever
4 portion you need as we go forward.

5 All right. Don't discuss the case until all
6 of you are back together. Thank you.

7 (Whereupon, the jury left the courtroom.)

8 MR. MOTTOLA: Your Honor, if I could, can I
9 just approach just regarding the instruction? With
10 counsel.

11 THE COURT: Come on up.

12 (Whereupon, there was a discussion held at
13 the bench off the record.)

14 (Whereupon, there was a pause in the
15 proceedings.)

16 THE COURT: All right. Second call on the
17 trial.

18 (Whereupon, there was a break in the
19 proceedings and then resumed shortly thereafter.)

20 THE COURT: Recalling the case on trial.

21 You want to have them line up, the jurors?

22 COURT OFFICER: Yes.

23 THE CLERK: All the parties are present
24 outside the presence of the jury.

25 THE COURT: With the exception of Mr. Wittwer

1 who will be in, I am sure, momentarily.

2 MR. MOTTOLA: Yes.

3 THE COURT: We have another note, Court
4 Exhibit Number 5. Copies have been given to both
5 sides.

6 Please re-read the entirety of count number
7 one, attempted assault in the first degree with
8 conditions that need to be met to charge defendant
9 guilty or not guilty.

10 Please re-read the entirety of count number
11 two, assault in the second degree, with the conditions
12 needed to be met to charge the defendant guilty or not
13 guilty.

14 Please explain justification as it applies to
15 both charges.

16 I think that's pretty self-explanatory. As I
17 said, I will indicate to them that they cannot take
18 notes.

19 (Whereupon, there was a pause in the
20 proceedings.)

21 COURT OFFICER: Ready for the jury?

22 THE COURT: Yes. Thank you.

23 COURT OFFICER: Jury entering.

24 Step in.

25 (Whereupon, the jury entered the courtroom.)

1 THE CLERK: The jury panel is present and
2 properly seated.

3 Does each side waive the jury roll call?

4 MR. MOTTOLA: So waived.

5 MS. BURKE: So waived.

6 THE COURT: Thank you.

7 All right, folks, we have your note, Court
8 Exhibit Number 5. Please re-read the entirety of count
9 number one, attempted assault in the first degree, with
10 the conditions that need to be met to charge the
11 defendant guilty or not guilty.

12 Please re-read the entirety of count number
13 two, assault in the second degree, with the conditions
14 that need to be met to charge the defendant guilty or
15 not guilty.

16 Please explain justification as it applies to
17 both charges.

18 So we will go ahead and do that.

19 By the way, this, your note number three you
20 asked whether you could take notes while I am reading.
21 You may not.

22 With respect to counts one and two, the
23 defendant has raised the defense of justification.
24 Also known as self-defense. The defendant, however, is
25 not required to prove that he was justified. The

1 People are required to prove beyond a reasonable doubt
2 that the defendant was not justified.

3 I will now explain our law's definition on
4 the defense of justification as it applies in this
5 case.

6 Under our law, a person may use physical
7 force upon another individual when, and to the extent
8 that he reasonably believes it to be necessary to
9 defend himself from what he reasonably believes to be
10 the use or imminent use of physical force by such
11 individual.

12 The determination of whether a person
13 reasonably believes physical force to be necessary to
14 defend himself from what he reasonably believes to be
15 the use or imminent use of physical force by another
16 individual requires you to apply a two-part test. And
17 that test applies to this case in the following way.

18 First, the defendant must have actually
19 believed that Mohammed Khalifa was using or was about
20 to use physical force against him. And that the
21 defendant's own use of physical force was necessary to
22 defend himself from it.

23 And second, a reasonable person in the
24 defendant's position, knowing what the defendant knew
25 and being in the same circumstances, would have had

1 those same beliefs. It does not matter that the
2 defendant was or may have been mistaken in his belief,
3 provided that such belief was both honestly held and
4 reasonable.

5 Notwithstanding the rules I have just
6 explained, the defendant would not be justified in
7 using physical force under the following circumstances.

8 First, the defendant would not be justified
9 if he was the initial aggressor. Except that the
10 defendant's use of physical force would nevertheless be
11 justified if he had withdrawn from the encounter and
12 effectively communicated such withdrawal to Mohammed
13 Khalifa. But Mohammed Khalifa persisted in continuing
14 the incident by the use or threatened imminent use of
15 physical force.

16 Arguing, using abusive language, calling a
17 person names or the like, unaccompanied by physical
18 threats or acts, does not make a person an initial
19 aggressor and does not justify physical force.

20 Initial aggressor means the person who first
21 attacks or threatens to attack. That is, the first
22 person who uses or threatens the imminent use of
23 offensive physical force. The actual striking of the
24 first blow or inflicting of the first wound, however,
25 does not necessarily determine who was the initial

1 aggressor.

2 A person who reasonably believes that another
3 is about to use physical force upon him need not wait
4 until he is struck or wounded. He may, in such
5 circumstances, be the first to use physical force, so
6 long as he reasonably believed it was about to be used
7 against him. He is then not considered to be the
8 initial aggressor, even though he strikes the first
9 blow or inflicts the first wound.

10 Second, the defendant would not be justified
11 if Mohammed Khalifa's conduct was provoked by the
12 defendant himself with intent to cause physical injury
13 to Mohammed Khalifa.

14 The People are required to prove beyond a
15 reasonable doubt that the defendant was not justified.
16 It is thus an element of each count that the defendant
17 was not justified.

18 As a result, if you find that the People have
19 failed to prove beyond a reasonable doubt that the
20 defendant was not justified, then you must find the
21 defendant not guilty under counts one and two.

22 The first count is attempt to commit the
23 crime of assault in the first degree. I will instruct
24 you first on the definition of the crime of assault in
25 the first degree, then I will define attempt, and then

1 we will put the two definitions together.

2 Under our law, a person is guilty of assault
3 in the first degree when with the intent to cause
4 serious physical injury to another person, he causes
5 such injury to that person by means of a dangerous
6 instrument.

7 Serious physical injury means impairment of a
8 person's physical condition which creates a substantial
9 risk of death, or which causes death or serious and
10 protracted disfigurement, or protracted impairment of
11 health, or protracted loss or impairment of the
12 function of any bodily organ.

13 Intent means conscious objective or purpose.

14 Thus, a person acts with intent to cause
15 serious physical injury to another when that person's
16 conscious objective or purpose is to cause serious
17 physical injury to another.

18 Dangerous instrument means any instrument,
19 article or substance which under the circumstances in
20 which it is used, attempted to be used, or threatened
21 to be used is readily capable of causing death or other
22 serious physical injury.

23 Under our law, a person is guilty of an
24 attempt to commit a crime when with intent to commit a
25 crime, he engages in conduct which tends to effect the

1 commission of such crime.

2 Intent again means conscious objective or
3 purpose. Thus, a person acts with intent to commit a
4 crime when his or her conscious objective or purpose is
5 to commit that crime.

6 Conduct which tends to effect the commission
7 of a crime means conduct which comes dangerously close
8 or very near to the completion of the intended crime.

9 If a person intends to commit a crime and
10 engages in conduct which carries his or her purpose
11 forward within dangerous proximity to the completion of
12 the intended crime, he or she is guilty of an attempt
13 to commit that crime. It does not matter that the
14 intended crime was not actually completed.

15 The person's conduct must be directed toward
16 the accomplishment of the intended crime. It must go
17 beyond planning and mere preparation, but it need not
18 be the last act necessary to effect the actual
19 commission of the intended crime. Rather, the conduct
20 involved must go far enough that it comes dangerously
21 close or very near to the completion of the intended
22 crime.

23 In order for you to find the defendant guilty
24 of an attempt to commit the crime of assault in the
25 first degree, the People are required to prove from all

1 the evidence in the case beyond a reasonable doubt each
2 of the following three elements.

3 First, that on or about August 11, 2015, in
4 the County of Kings, the defendant, Lorenzo McGriff,
5 intended to commit the crime of assault in the first
6 degree.

7 Second, that the defendant engaged in conduct
8 which tended to effect the commission of that crime.

9 And third, that the defendant was not
10 justified.

11 Therefore, if you find that the People have
12 proven beyond a reasonable doubt each of those three
13 elements, you must find the defendant guilty of
14 attempted assault in the first degree under the first
15 count.

16 On the other hand, if you find that the
17 People have failed to prove beyond a reasonable doubt
18 any one or more of those elements, you must find the
19 defendant not guilty of the crime of attempted assault
20 in the first degree under the first count.

21 The second count is assault in the second
22 degree.

23 Under our law, a person is guilty of assault
24 in the second degree when with intent to cause physical
25 injury to another person, he causes such injury to that

1 person by means of a dangerous instrument.

2 Physical injury means impairment of physical
3 condition or substantial pain.

4 Intent again means conscious objective or
5 purpose.

6 Thus, a person acts with intent to cause
7 physical injury to another when that person's conscious
8 objective or purpose is to cause physical injury to
9 another.

10 Dangerous instrument again means any
11 instrument, article or substance which under the
12 circumstances in which it is used, attempted to be
13 used, or threatened to be used, is readily capable of
14 causing death or other serious physical injury.

15 That is, serious and protracted
16 disfigurement, protracted impairment of health, or
17 protracted loss or impairment of the function of any
18 bodily organ.

19 Under this definition, death or other serious
20 physical injury need not, in fact, be caused.

21 In order for you to find the defendant guilty
22 of this crime, the People are required to prove from
23 all the evidence in the case beyond a reasonable doubt
24 each of the following three elements.

25 One, that on or about August 11, 2015, in the

1 County of Kings, the defendant, Lorenzo McGriff, caused
2 physical injury to Mohammed Khalifa by means of a
3 dangerous instrument.

4 Second, that the defendant did so with the
5 intent to cause physical injury to Mohammed Khalifa.

6 And three, that the defendant was not
7 justified.

8 Therefore, if you find that the People have
9 proven beyond a reasonable doubt each of those three
10 elements, you must find the defendant guilty of assault
11 in the second degree as charged in the second count.

12 On the other hand, if you find that the
13 People have not proven beyond a reasonable doubt any
14 one or more of those three elements, you must find him
15 not guilty of assault in the second degree as charged
16 in the second count.

17 All right. I am going to send you back to
18 continue your deliberations. Please don't discuss the
19 case until all 12 of you are back in the jury room with
20 the door closed. Thank you.

21 JUROR: Thank you.

22 (Whereupon, the jury left the courtroom.)

23 THE COURT: Okay. Third call.

24 (Whereupon, other business was conducted and
25 then the case continued.)

1 THE CLERK: Recalling the case on trial of
2 Lorenzo McGriff. Calendar number two on the 33
3 calendar today. The parties are present. Attorneys
4 are present. Defendant's present. Outside the
5 presence of the jury panel.

6 THE COURT: All right. All appearances are
7 as previously noted. I will -- you can have a seat.

8 We have a note from the jury marked as Court
9 Exhibit Number 6 indicating that the jury has reached a
10 verdict on both counts.

11 You can line them up.

12 Just a word. Before we -- by the way, both
13 counsels, I believe, were given a note, given copies of
14 the last jury note.

15 MR. MOTTOLA: Yes.

16 THE COURT: Miss Burke, you received one,
17 correct?

18 MS. BURKE: Yes, I have.

19 THE COURT: All right. Before the verdict is
20 announced, let me just, I will thank all the lawyers,
21 but in the interim there's to be no yelling, no outcry,
22 no nothing at all, regardless of what the verdict is.
23 Everyone is to remain seated until the jury is escorted
24 out. Whatever the verdicts may be.

25 (Whereupon, there was a pause in the

1 proceedings.)

2 THE COURT: The gentlemen who just came in,
3 just a word. Regardless of what the verdict may be,
4 there is to be in noise, no comment. You're to remain
5 seated until the jury is escorted out.

6 COURT OFFICER: You ready for the jury, Your
7 Honor?

8 THE COURT: Yes. Thank you.

9 COURT OFFICER: Jury entering.

10 (Whereupon, the jury entered the courtroom.)

11 THE CLERK: Will the foreperson --

12 THE COURT: No. Jury panel is present.

13 THE CLERK: Yes. Jury panel is present and
14 properly seated.

15 Does each side waive the jury roll call?

16 MR. MOTTOLA: So waived.

17 MS. BURKE: So waived.

18 THE CLERK: Thank you, counsels.

19 Will the foreperson please rise?

20 In the matter of the People of the State of
21 New York against Lorenzo McGriff, has the jury agreed
22 upon a unanimous verdict?

23 THE FOREPERSON: Yes.

24 THE CLERK: Okay. As to count one, charging
25 the crime attempted assault in the first degree, what

1 is your verdict?

2 THE FOREPERSON: Can we read it out loud?

3 THE COURT: Yes.

4 THE FOREPERSON: Found not guilty.

5 THE CLERK: Okay. As to count two regarding
6 the crime of assault in the second degree, what is your
7 verdict?

8 THE FOREPERSON: Found guilty.

9 THE CLERK: Okay. The foreperson may be
10 seated.

11 Members of the jury, please hear your verdict
12 as it stands recorded.

13 You say you find the defendant not guilty as
14 to count one, attempted assault in the first degree,
15 and guilty as to count two, assault in the second
16 degree.

17 Members of the jury, is this your verdict and
18 so say you all?

19 THE JURY: Yes.

20 THE CLERK: Okay. Do the attorneys request a
21 polling of the jury?

22 MR. MOTTOLA: No.

23 MS. BURKE: I would.

24 THE CLERK: Members of the jury, please
25 answer the following question.

1 Is the verdict announced by your foreperson
2 your verdict in all respects?

3 Juror number one, is this your verdict?

4 JUROR: Yes, it is.

5 THE CLERK: Juror number two, is that
6 verdict?

7 JUROR: Yes.

8 THE CLERK: Juror number three, is this your
9 verdict?

10 JUROR: Yes.

11 THE CLERK: Juror number four, is this your
12 verdict?

13 JUROR: Yes.

14 THE CLERK: Juror number five, is this your
15 verdict?

16 JUROR: Yes.

17 THE CLERK: Juror number six, is this your
18 verdict?

19 JUROR: Yes.

20 THE CLERK: Juror number seven, is this your
21 verdict?

22 JUROR: Yes.

23 THE CLERK: Juror number eight, is this your
24 verdict?

25 JUROR: Yes.

1 THE CLERK: Juror number nine, is this your
2 verdict?

3 JUROR: Yes.

4 THE CLERK: Juror number ten, is this your
5 verdict?

6 JUROR: Yes.

7 THE CLERK: Juror number 11, is this your
8 verdict?

9 JUROR: Yes.

10 THE CLERK: Juror number 12, is this your
11 verdict?

12 JUROR: Yes.

13 THE CLERK: Okay. The members of the jury
14 having been polled and all answered the verdict as
15 their own. Thank you.

16 THE COURT: All right, ladies and gentlemen,
17 I want to thank you for your service at the trial. We
18 appreciate your attention, your prompt appearance every
19 morning, your dedication to this process, and your hard
20 work. We could not do what we do here every day
21 without jurors such as yourselves who take on this
22 significant responsibility. We are all very much
23 appreciative of the fact that you do it.

24 You recall I told you pretty much every time
25 we part company you are not to discuss the case with

1 anyone. Of course that prohibition no longer applies.
2 There is no law that requires you to discuss the case
3 with anyone. There is nothing to keep you from doing
4 so. Whether you choose to or not is left entirely to
5 your own individual discretion.

6 So again, I thank you. We wish you a
7 wonderful holiday season. Happy, healthy, prosperous
8 year going forward. Thank you again. You are now
9 excused.

10 COURT OFFICER: Follow me, guys.

11 JUROR: Thank you.

12 (Whereupon, the jury left the courtroom.)

13 THE COURT: Okay. Miss Burke, you want to
14 reserve motions? What do you want to do?

15 MS. BURKE: Yes, I would, Your Honor, reserve
16 the motions.

17 MR. MOTTOLA: Yes, Your Honor.

18 In light of the changed circumstance, the
19 defendant being a violent predicate faces a minimum of
20 five years incarceration, I would ask he be held in
21 remand until sentence.

22 MS. BURKE: Your Honor, I would ask that
23 Mr. McGriff be allowed to remain at liberty. The Court
24 is well aware of the fact that Mr. McGriff has been to
25 Court each and every time that he has been required to

1 be here. He's been here prior even before counsel has
2 gotten here. He does not have any warrant history. He
3 has verified community ties. He was employed at the
4 time of his arrest. Gainfully employed for almost six
5 years at the time of his arrest.

6 He also has verified community ties because
7 he has his wife, who is here. The Court is aware
8 through testimony she also works. She also has some
9 health conditions that Mr. McGriff assists her with.

10 There is no evidence or even thought that
11 Mr. McGriff would absent himself from sentencing. I am
12 asking the Court to allow him to remain at liberty
13 until sentencing. He has -- he did make bail on the,
14 on this case. He has come in every time. He has not
15 violated any of his bail conditions either.

16 (Whereupon, there was a pause in the
17 proceedings.)

18 MS. BURKE: Judge, I would just also add the
19 original arrest for, was for I believe attempted
20 murder, and the conviction by the jury is for an
21 assault in the second degree, a much lesser offense.

22 (Whereupon, there was a pause in the
23 proceedings.)

24 THE COURT: Approach.

25 (Whereupon, there was a discussion held at

1 the bench off the record.)

2 THE COURT: All right. Had a discussion with
3 counsels here, all counsels up at the bench. I
4 understand that the People's request, the People's
5 position. Mr. McGriff has made all the court
6 appearances since he's out on bail. And given the
7 seriousness of the charges, I am going to, it's sort of
8 a hybrid response. I am going to leave Mr. McGriff out
9 on bail until January 3. On January 3 I'll call the
10 case and he will surrender him himself. At the time he
11 will go in.

12 And then instead of doing an out I and S, I
13 will order an in I and S, and we will adjourn the
14 sentencing for that period. This way he can be out
15 with his family until after New Year's.

16 If there is any issue at all with your client
17 returning to court, it is a 10 a.m. call, I will
18 forfeit his bail. So it's more than just remand. His
19 family will lose all the bail that they put up.

20 All right. So January 3 for the defendant to
21 surrender and then we will order an in I and S.

22 MS. BURKE: Would the Court allow my office
23 to do a presentence report as well?

24 THE COURT: I mean for that day? Or for
25 sentence?

1 MS. BURKE: No. For sentencing.

2 THE COURT: Yeah. You are entitled to submit
3 any kind of sentencing memorandum that you choose.
4 That's fine.

5 MS. BURKE: Okay.

6 THE COURT: All right. So, Mr. McGriff, I am
7 going to give you the opportunity to spend the holidays
8 with your family. But I am going to warn you like I
9 said, you have a lot of bail that was made on this
10 case. You're facing, you are facing a period of
11 incarceration. If you fail to appear, if I have any
12 reason to forfeit your bail, your family will lose a
13 tremendous amount. Not only your wife, I believe your
14 sister-in-law and your cousin were also people who
15 vouched for you and put up bail money.

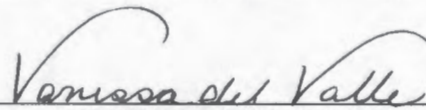
16 So, additionally if you fail to appear I can
17 consider that in my ultimate -- in the sentence that
18 you ultimately receive.

19 All right. January 3. Bail is continued.

20 Thank you.

21 * * * * *
(Whereupon, the proceedings were adjourned to
January 3, 2017.)

22 * * * * *
23 It is hereby certified that the foregoing is a true
and accurate transcript of the proceedings.

24 
25 VANESSA DEL VALLE

Senior Court Reporter

VdV

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS CRIMINAL TERM: PART 33

3 -----x
4 THE PEOPLE OF THE STATE OF NEW YORK

Indictment No.
06248/2015

5 -against-

6 LORENZO McGRIFF,

Defendant.

7 -----x

8 320 Jay Street
9 Brooklyn, New York 11201
January 17, 2017

10 B E F O R E: HONORABLE MIRIAM CYRULNIK,

JUSTICE

11
12 A P P E A R A N C E S

13
14 ERIC GONZALEZ, ESQ.
15 KINGS COUNTY DISTRICT ATTORNEY
16 BY: STEPHANIE D'AGOSTINO, ESQ.
LAWRENCE MOTTOLA, ESQ.

17 BROOKLYN DEFENDER SERVICES
18 FOR THE DEFENDANT:
19 BY: JAMIE BURKE, ESQ.

20
21
22
23 Harold Ortiz
24 Senior Court Reporter
25

P R O C E E D I N G S

1 (Whereupon, the following takes place on the
2 record, in open court, in the presence of the Court, the
3 defendant, Mr. McGriff, the defendant's attorney and the
4 Assistant District Attorneys.)

5 THE CLERK: Calling No. 4 from the Part 33
6 calendar. Indictment 6248, 2015. Lorenzo McGriff.

7 Defendant is incarcerated and produced before the
8 Court. Case is scheduled for sentencing today.

9 Appearances.

10 MS. BURKE: Jamie Burke, Brooklyn Defender
11 Services, 177 Livingston Street, Brooklyn, New York 11201 on
12 behalf of Mr. McGriff.

13 Good afternoon, your Honor.

14 THE COURT: Good afternoon.

15 MR. MOTTOLA: For the Office of the District
16 Attorney Lawrence Mottola.

17 MS. D'AGOSTINO: Stephanie D'Agostino for the
18 Office of the District Attorney.

19 Good afternoon.

20 THE COURT: Good afternoon.

21 The matter is on today for any defense motions and
22 for sentencing.

23 MS. BURKE: Your Honor, I to have an oral defense
24 motion to make.

25 THE COURT: Why don't we have your client have a

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1 seat to be more comfortable.

2 MS. BURKE: In regards to sentencing, my client is
3 making an application to adjourn sentencing. I've had an
4 opportunity to review the probation report that was
5 submitted. It is a bit sparse as far as background
6 information and social information regarding Mr. McGriff. We
7 have engaged the use of a social worker from my office in an
8 attempt to present to the Court a presentence memoranda to
9 give the Court a full picture of Mr. McGriff's life.

10 The Court is aware that Mr. McGriff has family
11 here and in the probation report it only mentions his wife.
12 It doesn't mention his children, how long he has been married
13 or anything like that. I like an opportunity to present a
14 fuller picture of Mr. McGriff's social, economic and
15 background so that the Court can make an informed decision as
16 far as sentencing is concerned, but I can make the trial
17 order dismissal motion orally.

18 THE COURT: Go ahead.

19 MS. BURKE: At this time, your Honor, I'm asking
20 the Court to set aside the verdict that was reached by the
21 jury in this matter. The jury did convict Mr. McGriff of
22 assault in the second degree. I believe that the jury was
23 mistaken on the facts and on the law.

24 The Court is aware of the facts that were elicited
25 at trial. We know that the complaining witness never

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1 appeared in court. That the testimony that the Court heard
2 was from the four witnesses. Sorry, five witnesses presented
3 by the People. The main witnesses were the three women who
4 had testified and all three of them did testify that they saw
5 Mr. McGriff with an instrument in his hand and that they saw
6 Mr. McGriff stab at Mr. Khalifa the complaining witness.
7 None of the witnesses could attest to the incident that
8 occurred prior to that encounter. That brief encounter that
9 they did see.

10 The Court is aware there were several videotapes
11 played for the jurors and in the videotape it clearly shows
12 that Mr. Khalifa was following Mr. McGriff. It clearly shows
13 in the videotape that Mr. Khalifa picked up a rock or a piece
14 of concrete or brick from rubble in the street near a
15 construction site and that Mr. Khalifa put this item in a
16 shirt and began rolling it around.

17 The Court heard testimony from Mr. McGriff that
18 this action placed him in fear of his life. The Court did
19 instruct the jury on justification and part of the
20 instruction that the Court did give the jury was that if
21 Mr. McGriff felt that his life was in danger then he could
22 respond in order to protect himself from that danger and by
23 all accounts Mr. McGriff did exactly that. He protected
24 himself from the danger that he perceived was imminent at the
25 hands of Mr. Khalifa.

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1 The Court is aware that Mr. Khalifa's actions as
2 documented by the medical reports and as testified to by the
3 EMT worker were that of a man that was out of control, he was
4 aggressive, he was vicious, he was saying racist rants and
5 making gestures and Mr. McGriff saw this for quite some time,
6 because according to the testimony of Mr. McGriff Mr. Khalifa
7 followed him for several blocks before Mr. McGriff turned to
8 defend himself.

9 So the fact that Mr. McGriff did stab Mr. Khalifa
10 with an instrument is undisputed. What the jury got wrong is
11 the justification defense. I believe that the jury was
12 mistaken when not using the justification defense for
13 Mr. McGriff, because they used it -- it appears that they
14 used it on the attempted assault in the first degree, but did
15 not apply it to the assault in the second degree. The same
16 defense holds true for the same actions in the second degree
17 and I am asking the Court to set aside the verdict that was
18 reached by this jury panel.

19 MR. MOTTOLA: I would just say, your Honor, what
20 counsel is asking us to do is speculate as to what exactly
21 occurred during jury deliberation. A large part of my
22 summation this incident was really two separate incidents and
23 after the initial blows were struck and Mr. Khalifa fled from
24 the defendant, the defendant pursued him and there was
25 testimony he struck the victim three additional times while

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1 fleeing and already injured. There is no way for us to know
2 whether or not the jury found Mr. McGriff guilty because of
3 that. If my argument was compelling to them. All we know is
4 that they did return a verdict of guilty supported by the
5 evidence and I would ask the Court not to disturb that
6 verdict at this time.

7 THE COURT: Counsel, you characterize it as a
8 motion for trial order of dismissal, but I think you would
9 agree with me that what you are actually asking the Court to
10 do is set aside the verdict under 330.30.

11 MS. BURKE: Yes.

12 THE COURT: That motion to set aside the verdict
13 is denied.

14 In terms of an adjournment for sentencing, how
15 long an adjournment you looking for?

16 MS. BURKE: My social worker just e-mailed me and
17 she has an appointment set up for tomorrow at 1 p.m. through
18 video conference. Apparently, video conference were
19 cancelled on Friday for whatever reason and Mr. McGriff was
20 not produced for a video conference. We thought we would
21 have a report for today. Possibly a week, your Honor.

22 THE COURT: Approach.

23 MS. BURKE: Your Honor, just for the record, I am
24 handing Mr. McGriff a copy of his minutes.

25 (Whereupon, an off the record discussion was held

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1 at the bench.)

2 THE COURT: All right. Just you know as counsels
3 are aware we have certain constraints that we operate under
4 in terms of sentences for incarcerated defendants.
5 Particularly those going upstate. So I cannot give you a
6 week's adjournment, but I will put it on for Friday for that.
7 It's already actually more than the 10 days. I will put it
8 on for Friday which is the 20th and we will make it an
9 11 a.m. call for counsels to be here as soon as Mr. McGriff
10 is produced and if the written report is not ready then I
11 will expect you to do it orally and provide whatever
12 information you need to orally at that time.

13 MS. BURKE: Yes, your Honor.

14 Your Honor, as I stated earlier, Mr. McGriff has
15 family members here. I don't know if his sister will be able
16 to make it on Friday. She did want to address the Court as
17 far as sentencing is concerned.

18 THE COURT: No. Like I said, Friday -- I could go
19 forward with the sentencing today, but I am going to give you
20 the opportunity to provide additional material.

21 MS. BURKE: Thank you, your Honor.

22 THE COURT: January 20th.

23 THE CLERK: Can we do the predicate statement
24 today?

25 THE COURT: Actually, let's do that.

P R O C E E D I N G S

1 MR. MOTTOLA: Yes.

2 THE CLERK: Ms. Burke, have you gone over the
3 predicate statement with your client?

4 MS. BURKE: Yes.

5 THE CLERK: Ready to proceed?

6 MS. BURKE: Yes.

7 THE CLERK: Mr. McGriff, you have been provided
8 with the statement by the District Attorney's office,
9 according to Article 400 of the Criminal Procedure Law and
10 Article 70 of the Penal Law, which states that you have been
11 convicted and sentenced on a prior felony. As to the prior
12 crime of manslaughter in the first degree under indictment
13 number 7901 of 1992. That was here in Kings County, New
14 York. Date of sentence in that case was June 28, 1993.

15 Sir, you may admit, deny or stand mute as to
16 whether you are the person who was convicted and sentenced on
17 that prior felony as recited in that statement. If you wish
18 to controvert that statement on any grounds including, a
19 violation of your constitutional rights, you must state the
20 grounds, and you will be entitled to a hearing before this
21 Court, without a jury.

22 Sir, have you received a copy of that statement?

23 THE DEFENDANT: Yeah.

24 THE CLERK: Yes. Have you discussed this matter
25 with your attorney next to you?

P R O C E E D I N G S

1 THE DEFENDANT: Yes.

2 THE CLERK: You have to answer for the record,
3 sir. Have you discussed this matter with your attorney?

4 THE DEFENDANT: Yeah.

5 THE CLERK: Do you admit that you are the person
6 who was convicted of that prior felony?

7 THE DEFENDANT: Yeah.

8 THE CLERK: Do you wish to challenge the
9 constitutionality of the prior conviction?

10 THE DEFENDANT: No comment.

11 THE CLERK: Stand mute.

12 THE COURT: I am sorry.

13 THE CLERK: He said no comment.

14 THE COURT: No comment, okay.

15 Defendant is adjudicated a second violent felony
16 offender. January 20th, 11 a.m. call. Remand is continued.
17 Medical attention is continued.

18 (Whereupon, the case was adjourned to Friday,
19 January 20, 2017 at 11 a.m. in Part 33.)


20 * * * *

21 Certified to be a true and accurate transcript of
22 the stenographic minutes taken within.

23

24

25


Harold Ortiz
Senior Court Reporter

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS: CRIMINAL TERM, PART 33

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK,

5 Ind. No.
6248/15

6 -against-

7 Sentence

8 LORENZO MCGRUFF,

9 Defendant.

10 -----X

11

12 January 20, 2017
13 Kings Supreme Court
14 320 Jay Street
15 Brooklyn, New York 11201

16

17 B E F O R E :

18 MIRIAM CYRULNIK,

19 Supreme Court Justice

20

21

22 A P P E A R A N C E S :

23

24 For the People:

25

26 THE HONORABLE ERIC GONZALEZ,
27 District Attorney, Kings County
28 BY: LAWRENCE MOTTOLA, ESQ.
29 Assistant District Attorney

30

31 For the Defendant:

32

33 BROOKLYN DEFENDER SERVICES
34 BY: JAIME BURKE, ESQ.
35 BY: KENNETH WHIPPER, ESQ.

36

37 John Cardillo
38 Senior Court Reporter

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1 THE CLERK: Calling Calendar 14. Part 33.
2 Calendar 6248 of 2015. Lorenzo McGriff. Defendant is
3 incarcerated, produced. The case is on for sentencing.

4 MS. BURKE: Jamie Burke. Brooklyn Defender
5 Services. 177 Livingston Street, Brooklyn, New York 11201,
6 on behalf of Mr. McGriff.

7 MR. WHIPPER: Ken Whipper on behalf of Mr. McGriff.

8 MR. MOTTOLA: Office of the District Attorney,
9 Lawrence Mottola. Good morning.

10 THE CLERK: Just to add a note, defendant was
11 adjudicated a Second Violent Felony Offender.

12 THE COURT: Matter is on for sentencing. I had an
13 opportunity to read the People's presentence letter, and I
14 received earlier today, the presentencing report prepared by
15 BDS, and your mitigation specialist on behalf of your client.

16 MS. BURKE: Thank you, your Honor. I would like to
17 add a couple of more things. I understand that our
18 mitigation specialist had submitted a report outlining some
19 of Mr. McGriff's accomplishments and some of the issues that
20 Mr. McGriff has been facing since childhood.

21 I would like to add, Mr. McGriff was found guilty
22 of a manslaughter charge and was incarcerated for a period of
23 17 years prior to this incident on September of 2015.

24 What the Court should also be aware of is that even
25 during Mr. McGriff's incarceration for that extended period

1 of time, he was preparing for his re-entering into society.

2 In 1998 Mr. McGriff received his high school
3 equivalency diploma. In 2004, Mr. McGriff completed Phase 3
4 of his curriculum at one of the correctional facilities.
5 Even though he was incarcerated and suffering from untreated
6 post-traumatic stress disorder he was still continuing to
7 educate himself --

8 THE COURT: Why don't have you a seat, Mr. Mottola,
9 while she is speaking.

10 MS. BURKE: -- to educate himself and to improve
11 his lot in life. He also did early recovery intervention.
12 He has a certificate of completion for that. He has met all
13 of the requirements of the Calm, Alert and Counseling Service
14 for early recovery group as early as September of 2009, and
15 he also received a food service training certificate in 2007.

16 He received forensic peer specialist training; and
17 in 2010 he received the New York Peer Specialist
18 Certification, Board Certified in 2016, and that's this year,
19 your Honor, even after he had been arrested for this
20 incident, was out on bail. Mr. McGriff is still trying to
21 improve his lot in life.

22 He is still trying to receive a certificate in
23 diversity in the workplace in 2012. He has put in many hours
24 in various programs. He has put in many hours in counseling
25 services. He has dedicated his life to peer counseling, so

1 that he could help others who had been in his situation for
2 facing adversities in life. But for this incident
3 interrupting his career path it seems that Mr. McGriff was
4 well on his way to becoming a very good upstanding citizen.

5 THE COURT: What is the HARP Program? I have not
6 heard of that?

7 MS. BURKE: May I have Mr. McGriff explain to the
8 Court?

9 THE DEFENDANT: The HARP is a peer advocacy
10 training program for people that suffer with mental illness
11 who shuffle from the system in life. We have a program where
12 we aide individuals who have mental illness, make their way
13 through life.

14 THE COURT: Fine. I have not heard of that. Thank
15 you. I'm sorry, Counsel.

16 MS. BURKE: But for this incident, which
17 interrupted Mr. McGriff's career path, he was well on his way
18 to becoming a very upstanding member of society. I would
19 briefly like to speak about the incident.

20 I know that Mr. McGriff did go to trial. The
21 reason Mr. McGriff went to trial is he felt he was justified
22 in defending himself against the complaining witness, who did
23 not appear in court ever on this case. Mr. McGriff still to
24 this day believes he was justified in defending himself.

25 The Court is aware of the facts that the

1 complaining witness pursued Mr. McGriff, called him racist
2 names, picked up an item that appeared to be a brick and
3 approached Mr. McGriff.

4 Mr. McGriff turned in the defendant himself. The
5 jury has now spoken on that matter, and the Court now has to
6 sentence Mr. McGriff. I am asking the Court to consider the
7 least restrictive sentence possible.

8 I want the Court to take into account all of the
9 things, that despite Mr. McGriff's injuries at such a young
10 age, his incarceration for such a long period of time that he
11 still has made strides in his life to become a productive
12 citizen.

13 He has the support of his wife, who has been here
14 throughout his trial, even though she was out in the hallway,
15 his sister who has come to court several times on his behalf.

16 There is no reason for the Court to sentence
17 Mr. McGriff to the maximum term, because it is just not
18 necessary. Mr. McGriff understands the severity of what he
19 has done, the period of incarceration.

20 He has been incarcerated before. A period of
21 incarceration is not going to rehabilitate him, because he
22 has been rehabilitated. He has shown that by other programs
23 that he has done and that he has accomplished.

24 Mr. McGriff is a man of his word. The Court gave
25 him an opportunity to remain at liberty after being found

1 guilty at trial to remain at liberty with his family after
2 the verdict. That is a hard task for someone to come back
3 into court the next day after a new year, the next business
4 day after a new year knowing that he is going to be
5 incarcerated, doesn't know for how many years, but he was
6 here on time, because he promised you that he would do that.

7 So I am asking the Court to consider that when
8 sentencing Mr. McGriff, that he is a man of his word. That
9 he is a man who has made, has overcome many, many burdens,
10 and I don't believe that sentencing him to the maximum would
11 benefit anyone. It won't benefit society.

12 The person that was injured didn't even come into
13 court to say how injured he was, whether it affected his life
14 or not. So I don't believe that a period of incarceration is
15 going to benefit society.

16 I don't believe a period of incarceration is going
17 to benefit Mr. McGriff. I am asking the Court to sentence
18 him to the minimum amount of time allowable by law.

19 THE COURT: Thank you very much. Mr. Mottola.

20 MR. MOTTOLA: Just briefly, your Honor, you are in
21 receipt of my sentencing letter. You presided over the case.
22 You know the facts. To say Mr. McGriff is rehabilitated, I
23 think is inaccurate. Given that his first felony offense was
24 for a murder in which he did take a plea, but he did kill a
25 woman that he did not know.

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8

1 would you like to make?

2 MS. BURKE: No additional statement from me.

3 THE CLERK: Thank you very much. And, Mr. McGriff,
4 is there anything you would like to say on your own behalf
5 with respect to the sentence?

6 THE DEFENDANT: Yes, I do. As my attorney said,
7 that I have been a productive citizen. I am a taxpaying
8 citizen, and this is the justice that I receive. Your Honor,
9 in all due respect, this man is lying. He has not come into
10 this courtroom and told one bit of truth, and I have been
11 telling the truth. So I am asking you to protect my
12 constitutional rights here today.

13 THE COURT: Thank you very much. Defendant was
14 found guilty of Assault in the Second Degree. On that count
15 defendant is sentenced to seven-years incarceration, followed
16 by five years post-release supervision.

17 DNA sample is waived since there is one on file.
18 Mandatory surcharge Crime Victim Assistance fee imposed, to
19 be taken from inmate funds.

20 THE CLERK: Mr. McGriff, you are advised that you
21 have the right to appeal from the sentence just imposed upon
22 you by filing a notice of appeal with the clerk of this Court
23 in duplicate within 30 days of this date.

24 A similar notice must be filed with the District
25 Attorney of Kings County. If you cannot afford to retain

1 counsel for this purpose you may apply to the Appellate
2 Division, 2d Department at 45 Monroe Place, Brooklyn, New
3 York and request that Counsel be assigned to you for the
4 purpose of prosecuting your appeal.

5 Let the record reflect the defendant is also going
6 to be handed a written notice of his right to appeal with the
7 instructions therein.

8 THE COURT: Okay. Thank you very much. You may
9 take charge.

10 THE CLERK: Is there a final order of protection or
11 none?

12 THE COURT: No.

13 MR. MOTTOLA: There's none. There is no order.

14 THE COURT: You may take charge.

15 THE DEFENDANT: You fucken-ass nigga. Fucken fagot.
16 Fucken bitch. Get the fuck out of here.

17 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE
18 ABOVE-MENTIONED TRANSCRIPT.

19

20



JOHN D. CARDILLO

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SENIOR COURT REPORTER

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